USE OF LAND TO STATION A MOBILE HOME (GRANNY ANNEXE)

37 The Gardens
Southwick
Brighton BN42 4AP

PLANNING STATEMENT

Kim Blunt
MSc Dept Planning

PLANNING SERVICES ADUR & WORTHING		
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VALID DATE	16 SEP 2013	

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APPENDIX A Appeal Decision Ref: APP/J1915/X/12/2189970 dated 07 December 2011 for the site at 4 Waterworks Cottage Redricks Lane Sawbridge Hertfordshire CM21 0RL

APPENDIX B Certificate of Lawfulness Ref: DC/13/0860 dated 09 July 2013 for the site at 9 Penlands Vale Steyning West Sussex BN44 3PL

APPENDIX C Certificate of Lawfulness Ref: 13/P/01071 dated 08 August 2013 for the site at 89 Applegarth Avenue Guildford GU2 8LX

APPENDIX D Appeal Decision Ref: APP/K3605/X/12/2181651 dated 15 April 2013 for the site at Sandy Holt, 9 Blackhills, Esher KT10 9JP

1.0 INTRODUCTION

1.1 This application is for a Certificate of Lawfulness for a proposed use or development under section 192 of the Town and Country Planning Act 1990 (as amended) to station a mobile home within the curtilage of the dwelling at 31 The Gardens. The mobile home would be occupied in conjunction with the main dwelling on the basis of providing incidental accommodation for one of the applicant's elderly mother in her later years.

1.2 The mobile home would be incidental to the main dwelling and used for the same purpose as an integral residential annexe had there been one. The elderly mother would occupy the mobile home as her living accommodation and the family would be close at hand to support him. The elderly mother would share the residential occupation and enjoyment of the principal dwelling and spend most of her day with the family in the main house including for all her meals and socialising.

1.3 Other facilities would also be provided by the main dwelling including laundry. The elderly mother would also share the outside amenity space with the family occupying the main dwelling and, it they so choose, they could socialise together there as well. There would be no subdivision of the curtilage and the mobile home would not be rented out or sold off separately.

1.4 Recent examples of Certificates issued under identical circumstances are included at Appendices A to C and the mobile home would be provided by the same company. A recent example of a Certificate for similar circumstances, in that it is for a mobile home ancillary to the main dwelling, is included at Appendix D.

1.5 The property at 31 The Gardens is a two storey dwelling with private outside amenity space and domestic outbuildings. The proposed mobile home would replace an existing summerhouse in the rear garden which would be dismantled and removed from the property. The summerhouse is less than 50 cubic metres in volume when measured externally. Removal of the structure therefore does not require an application for prior notification of proposed demolition consent as provided by Government Circular 10/95 which cites, at Appendix A, the Town & Country Planning (Demolition – Description of Buildings) Direction 1995 which states that the demolition of '2(e) any building the cubic content of which, measured externally, does not exceed 50 cubic metres' shall not be taken for the purposes of the T & CP Act 1990, to involve development.

2.0 THE PROPOSAL

2.1 This application is for a Certificate of Lawfulness for a proposed use or development under section 192 of the Town and Country Planning Act 1990 (as amended). It relates to the following:

- The use of land within the curtilage of the dwelling for the stationing of a mobile home to be occupied ancillary to the main house.

2.2 The key elements of the proposal are as follows:

- The unit would provide habitable accommodation
- The unit is manufactured so that it would be delivered to the site on a lorry and capable of removal
- It would not be permanently affixed to the ground, only services would be connected
- The use of the land would be ancillary to the dwelling at 31 The Gardens
- The mobile home would be occupied by the dependant relative, specifically the elderly mother, of the family occupying the dwelling at 31 The Gardens
- Close functional links would be retained with the family who own and occupy the main house and who the elderly mother will rely on for support for her day to day living needs
- The mobile home would not be provided with a private curtilage
- The mobile home would not have a separate postal address
- The mobile home would share the existing dwelling's utility services and would be jointly billed
- There would be no change to the planning unit
- The mobile home can be removed from the site when no longer needed

2.3 It is important to bear in mind that this is not an application for planning permission and the Development Plan considerations do not fall to be considered in a Certificate of Lawfulness for a proposed use or development.

3.0 GROUNDS ON WHICH A CERTIFICATE IS SOUGHT

3.1 Section 192 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) provides for any person wishing to ascertain whether a proposed use of land is lawful to submit an application for a Certificate of Lawfulness for a proposed use or development. This application is submitted under section 192(b) on the following grounds.

3.2 In this statement reference is made to mobile homes and caravans for the purpose of planning law they are one and the same thing. Planning law recognises that it is not the mobile home or caravan itself that requires planning permission but the use of land for stationing them thereon.

Legislation – Development requiring planning permission

3.3 The meaning of development requiring planning permission is provided in section 55 of the Town & Country Planning Act 1990 and comprises two elements:

a)Operational Development being "the carrying out of building, engineering, mining or other operations in ,on, over or under land"

b) "the making of any material change in the use of any buildings or other land."

Caravans and mobile homes

3.4 The definition of a caravan is provided in section 29(1) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) as follows:

> "... 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 motor vehicle so designed or adapted but does not include:
>
> Any railway rolling stock which is for the time being on rails forming part of a railway system, or any tent."

Please note that the definition relates to any structure and is not limited to what might in the ordinary sense of the word be thought of as a caravan. There was no description of the materials for such a structure. There was also no requirement that such a structure must comprise one with wheels for movement and transportation as the definition includes transportation on a motor vehicle.

3.5 This definition has been modified by Section 13 (1) of the Caravan Sites Act 1968 ("The 1968 Act"), which deals with twin-unit caravans. This 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 or other devices; and

b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),

shall not be treated as not being (or not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled."

Again, it should be noted that the definition relates to a structure and there is no description as to what that structure should look like. Neither is there any requirement that the structure can only comprise one with wheels. It remains a caravan or mobile home if it can be transported on a motor vehicle.

3.6 Section 13(2) of the 1968 Act (amended October 2006) prescribes the following maximum dimensions for "twin unit caravans":

(a) length (exclusive of any drawbar): 20 metres;

(b) width: 6.8 metres;

(c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 3.05 metres.

3.7 For planning purposes caravan (and mobile home) has the same meaning as that in the 1960 & 1968 Acts. So far as planning law is concerned, a mobile home comes within the legal definition of a caravan where it meets the tests, as set out by the Acts (as above) being:

i) it provides habitable accommodation

ii) it is within the maximum dimensions provided by the 1968 Act

iii) construction and iv) mobility which in this context means the mobile home must be capable of being moved when assembled from one place to another. This means that it cannot be fixed to the ground.

3.8 The legal definition has been found to be wide enough to include structures and erections which might ordinarily be regarded as a building, but the Courts, as in Wyre Forest DC v SOS (1990), have decided that it something falls within the statutory definition of a "Caravan" as provided by the 1960 & 1968 Acts it cannot also be a "Building" because of its element of mobility. The two definitions are mutually exclusive.

Operational Development

3.9 The matter of whether a structure constitutes operational development requiring planning permission is based on the first element of the definition provided in s55 namely "the carrying out of building, engineering, mining or other operations in, over or under land".

3.10 The House of Lords decision in Wyre Forest DC v SOS & Allens Caravans Ltd is the standard authority for using the statutory definitions provided within the 1960 & 1968 Acts and not the ordinary everyday meaning of the word, to determine whether in planning terms a lawful 'caravan' has changed into something that is not a caravan. (Development Control Practice (DCP) 4.353). Permanent works, such as an extension or large porch, which fix the mobile home to the ground, could mean that it would no longer come within the legal definition and could as a consequence be treated as a building.

3.11 The appeal court decision in Barvis Ltd v SOS (1971) defined the tests of what constitutes a "building" being size, permanence and degree of physical attachment and is a matter of fact and degree.

3.12 A caravan conforming to the statutory definition provided by the 1960 & 1968 Acts (where it meets all 4 tests listed at i) to iv) at paragraph 3.7 above) is not a building, specifically because:

- The size is limited by the maximum dimensions set out in the 1968 Act and that it must be lawfully transportable when assembled as a single unit or in two parts
- It is not attached to the ground by permanent works. The connection to services can just as easily be reversed and has been found by the courts to be de-minimis
- It is a temporary structure and can be removed when no longer needed

And is therefore considered to be a chattel placed on the land.

3.12 The author of this statement is aware of the case law Pambridge v SOS and East Hertfordshire DC [1997] as well as other cases. These all concerned the construction of a building for use as living accommodation and whether or not they would be permitted development for the purposes of Class E of Part 1 of Schedule 2 of the GPDO. The important point to bear in mind is that Class E of Part 1 of Schedule 2 of the GPDO is not at issue in this application for a certificate of lawful development. The GPDO provisions would only apply if any mobile home lost its mobility through operational development and is thus regarded as a building. The distinction therefore remains that Class E relates to building operations and not the use of land.

The use of land

3.13 A caravan does not therefore fall within the first element (operational) of the definition of development as provided by s55 of the T&CP 1990 Act and therefore fails within the second element of the definition being a use of the land, namely "the making of any material change in the use of any building or other land".

Town & Country Planning (General Permitted Development) Order 1995

3.14 Part 5 of Schedule 2 states that the use of land as a caravan site in certain circumstances can be permitted development. What this is aimed at is where planning permission might normally be required but Part 5 makes permitted development. The exemptions in Part 5 are linked to paragraph 2 of schedule 1 to the 1990 Act wherein is found "use within the curtilage of a dwelling house" but this is not specified as an exemption because such use is held to be incidental to the primary use and does not require planning permission. Part 5 therefore sets the planning context as to how the stationing of a mobile home within the curtilage of a dwelling should be regarded.

Will operational development be undertaken?

3.16 The proposed unit would meet the tests to be applied under planning law and there will be no operational development because:

Size

3.17 The proposed unit would conform to the dimensions set out by the 1968 Act and be lawfully transportable when assembled

Physical attachment

3.18 It is proposed to bring the mobile home to the site by lorry and to station it directly onto padstones with no fixing thereto. Case law confirms that this arrangement renders it a mobile home. This strongly points to acceptance on the Council's part that the proposed structure is not a building since it is were then Building Regulations would be applied. The connection to the services serving the dwelling will be de minimis.

Construction and mobility

3.19 The manufacturers confirm the construction of the unit would be sufficient for it to be lifted in to and out of position again, either as a single unit or in two sections, without it breaking up. The unit is therefore capable of being moved by a single motor vehicle or trailer and/or crane and meets the mobility test.

3.20 It is usual for most mobile homes to be delivered as a complete unit or as two halves that are then joined together on site. However there have been planning cases where the issue of the definition of Section 13(1) (a) of the 1968 Act has been the subject of consideration by the Courts. In Byrne v Sec of State for the Environment and Arun DC in 1997 it was held 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 the two sections together should be the final act of assembly."

3.21 In other words a mobile home can be delivered to a site in many pieces but it will then need to be assembled as two parts before being finally joined together. Provided the definition of a caravan/mobile home is adhered to then a building is not being proposed and the correct application of planning law will be to regard the development as being the use of land not building operations. But it does involve

operational development it would fall outside the definition. This means that a mobile home is not caught up in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 and the subsequent amendment Order No 2 of 2008. The 1960 Act expressly omits from licence control the use as a caravan site incidental to the enjoyment as such of a dwelling house within the curtilage of which the site is situated.

Permanence

3.22 There are tests established by the Courts for whether a structure placed on land has a sufficient degree of permanency to be judged "operational" development in terms of sec.55 of the 1990 Act. These tests have become overlain with importations from caravan related legislation. However, it can be shown that a mobile home having the conventional characteristics of mobility has been brought on to the site or subsequently adapted by the addition of foundations, brick skirts on other permanent additions then this can be used to claim that the mobile home has lost its mobility. In Byrne v Sec of State for the Environment and Anur DC [1997] the issue of mobility was reviewed in relation to a terrace and porch canopy that had been bolted onto the mobile home and decking attached to the chassis. It was held that these were not an integral part of the structure and could be quickly and easily removed. This should be contrasted with adding fixed skirts and full strip foundations.

3.23 It is likely the unit at 31 The Gardens will be in situ for as long as is necessary to meet the needs of the family occupying the main dwelling. This is true for most mobile homes used ancillary to main dwellings. This does not mean that the unit will remain there permanently. When it is no longer needed it can just as easily be disconnected from utilities and removed from the site. Given this mobility and the fact that it is a pre-constructed unit, there is no doubt that there is a second-hand market for such units when they have served their purpose in one location. In the circumstances it is submitted that no operational development is being undertaken. This view is supported by the Inspector in the East Hertfordshire appeal. (Appendix A).

Mobile homes in residential gardens

3.24 The use of a caravan or mobile home in a residential curtilage for "purposes incidental to the enjoyment of the dwelling house as such" falls within the primary use of the dwelling, and is excluded from the definition of development. A caravan or structure that meets the definition thereof is not operational development because of its mobility and for the

purposes of Section 55, planning law has the status of a chattel and it is thus a use of the land on which it is stationed.

3.25 The application is for the use of the land to station a caravan that meets the tests set out in the 1960 & 1968 Acts and it is not therefore a building. The proposal cannot therefore be assessed against the provisions of Class E of the General Permitted Development Order. The use of land, within the curtilage of a dwelling, to station a caravan does not require a site licence (as specified at paragraph 2 of Schedule 1 of the 1960 Act) and such use is held to be incidental to the primary use and is not development. The use of land applied for falls squarely within Part 5 of the GPDO.

3.26 The term "incidental" is not defined in planning law. But in Whitehead v S.O.S. & Mole Valley D.C. [1997] it was ruled that semi-independent housekeeper's accommodation in a barn within a dwelling's curtilage could be incidental to its enjoyment and thus permission was not required. The same conclusion was reached by the Inspector in the recent case in Elmbridge Borough.. (see Appendix D). In Uttlesford District Council v Secretary of State for the Environment and White [1992], it was held that the conversion of a garage in a residential curtilage to a granny annexe had not resulted in a material change of use, despite it including facilities that enabled the occupier to live independently. The general approach of the Courts is that it is the actual use of a mobile home that is determinative rather than its potential to be occupied as a self-contained residential unit. It is thus an established principal in planning case law that additional living accommodation, whether by conversion or a mobile home can be incidental to a principal dwelling even if capable of semi-independent occupation. So permission is not required for the mobile home in such circumstances.

3.27 Uttlesford D.C. v SSE and White [1992] also established that it is not necessary for a relative of the occupier of the main dwelling to rely upon facilities in the main dwelling house in order to maintain additional living accommodation in the same planning unit.

3.28 The circumstances in this case are quite clear that the planning unit is the dwelling and curtilage at 31 The Gardens and this will remain the case with the stationing of a mobile home in the garden. Only one dwelling will result albeit accompanied by a mobile home used incidental to the dwelling unit. The fact that the mobile home will have all the usual facilities for residential occupation by the applicant's dependant mother does not change the essential fact that it will be incidental to the house.

3.29 Attached at Appendix A to this Statement is an appeal decision regarding the self-same form of development as is proposed in this CLU application. That case in East Hertfordshire had been refused a certificate but the appeal Inspector firmly rejected all the planning authority's arguments in support of its decision.

3.30 Attached at Appendix D to this Statement is an appeal decision (reversing the decision to refuse the application by Elmbridge Borough Council) regarding the provision of a mobile home within the curtilage of a dwelling house to provide ancillary staff accommodation. In each appeal case, at East Hertfordshire and at Elmbridge, the Inspectors concluded that the mobile homes do not constitute operational development and nor would they involve a material change of use requiring planning permission. The Inspectors conclusions in both cases hold good for this current proposal.

contained residential unit. So permission may not be required for the mobile home.

Comments: The key comparisons with the current application are in red type. It is submitted that the answer to the question posed is the same that should be reached in this application for a certificate of lawfulness.

Other issues

3.31 The following extract from the Development Control Practice manual is relevant to the consideration of this certificate application.

Question: A 13m mobile home on wheels has been stationed in a garden more than 5m from the house. It includes a living room, bedroom, bathroom and kitchen and is occupied by the mains, power and drains. The unit is occupied by the household's mother. It is claimed that it is used as ancillary accommodation with the mother spending the day in the house. My authority considers the mobile home a self-contained unit of accommodation that requires permission. The householder disagrees, citing Whitehead v Secretary of State and Mole Valley District Council [1997]. What is your advice?

Answer: The mobile home appears to be a caravan that has not involved operational development. The use of a caravan in a residential curtilage for "purposes incidental to the enjoyment of the dwelling house as such" falls within the primary use of the dwelling, so it is excluded from the definition of development. The term "incidental" is not defined in planning law. But Whitehead intimated that semi-independent housekeeper's accommodation in a barn within a dwelling's curtilage could be incidental to its enjoyment and thus permission was not required. In Uttlesford District Council v Secretary of State for the Environment and White [1992], it was held that the conversion of a garage in a residential curtilage to a granny annexe had not resulted in a material change of use, despite it including facilities that enabled the occupier to live independently. The general approach of the courts is that it is the actual use of a caravan that is determinative rather than its potential to be occupied as a self-

4.0 CONCLUSION

4.1 The proposed timber unit falls within the definitions stated in the 1960 and 1968 Acts and by any reasonable interpretation is a mobile home. The stationing of such a structure within the curtilage of a dwelling is not operational development because it is not fixed to the ground and is capable of removal when no longer needed by the family occupying the main dwelling. The mobile home is a therefore a chattel to be used for purposes incidental to the enjoyment of the dwelling house as such. Incidental use is not the same as ancillary use so far as Planning legislation and case law is concerned. In particular, case law (Whitehead v Secretary of State\Mole Valley District Council) has ruled that semi-independent accommodation is incidental to a principal dwelling and this has been reaffirmed in other cases (eg Uttlesford v Secretary of State\White).

4.2 It is thus an established principal in planning case law that additional living accommodation, whether by erection of a building or a mobile home, can be incidental to a principle dwelling even if it is capable of semi-independent occupation. The Test as to whether a completely separate self-contained dwelling unit is being provided from the principal dwelling is therefore one of functional relationship between the mobile homeplanny annexe and the main dwelling, ie how it is used, and the size of the accommodation and how it is fitted out is irrelevant to the consideration of the application for a Certificate of Lawfulness. The test is met in this Certificate of proposed lawful use applicationship because there would be a strong functional relationship between the main dwelling and mobile homeplanny annexe which would form a part of and be used interchangeably with the accommodation provided by the main dwelling and the outside amenity space in support of the day to day living needs of the occupying family's elderly mother as detailed in Section 1 above.

4.3 The approach to be adopted in considering and determining this application is encapsulated in the very recent appeal decision at Appendix A. In that and this case the development is exactly the same; the mobile home would be provided by the same company. As a matter of both commonsense and planning law the material considerations are exactly the same.

4.4 For the reasons explained above it is submitted that the correct application of planning law in this case should result in the granting of a Certificate of Lawfulness for a Proposed Use of land.