Development Management - Delegated Officer Report

Application Number: AWDM/0609/18 **Recommendation – Issue Certificate**

Site: **33 Springate Road, Southwick**

Proposal: **Lawful Development Certificate for the stationing of mobile home in rear garden to be used as annexe by dependant relatives incidental to the main dwelling.**

Date of site visit: N/A

Neighbours checked: N/A

Additional neighbour notifications: N/A

Proposal, Site and Surroundings

The application site is located in a residential area in Southwick, dominated by post-war semi-detached bungalows. No 33 sits on a 90 degree bend in the road. It has a reasonably long rear garden, with vehicular access to a garage at the end of the garden.

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 for a mobile home 9.4m (length) x 6.3m (width) x 3.5m (external height, 3.02m internal height). It would replace the garage at the far southern end of the garden. The applicant has stated that the mobile home would be incidental to the main dwelling and used for the same purpose as an integral residential annexe, to be occupied by the applicants' elderly parents. The layout of the floorplan shows two bedrooms, a kitchen/lounge and a wet room and appears to be capable of functioning as a separate dwelling, particularly in view of the capacity for utilising the separate access at that end of the garden. The Planning Statement advises that "*the elderly parents would share the residential occupation and enjoyment of the principal dwelling and spend time with their family in the main house each day including for meals and socialising*."

The mobile home would not be attached to the ground or hardstanding and there would be no subdivision of the curtilage.

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.

Relevant site history

Consultations

Legal have made the following comments in respect of a similar application in 2013 at 31 The Gardens, Southwick (AWDM/1181/13).

Does the proposal amount to development requiring planning permission?

Town and Country Planning Act 1990
Under the Town and Country Planning Act 1990 (TCPA 1990), planning permission is required for the carrying out of any development of land (section 57(1), TCPA 1990).

Development includes:

- *The carrying out of building operations on land.*
- *The making of any material change in the use of any buildings or other land.*

Does the proposal amount to the carrying out of building operations?

Section 55(2)(d) provides that the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such, is not to be taken for the purpose of the Act to involve development of the land.

In Measor v Secretary of State for the Environment, Transport and the Regions [1998] 4 P.L.R. 93; [1999] J.P.L. 182, it was held that the approach to the definition of a "building" should be considered, as a matter of fact and degree, in the light of factors such as size, permanence, physical attachment and composition by components. Generally a mobile caravan would not satisfy that definition, taking into account factors such as permanence and attachment.

Although the Courts have not ruled out the possibility that a mobile home/caravan could be a building. It is always a matter of fact and degree and each case would be considered on its own merits looking at permanence and attachment.

William Newland v Secretary of State for CLG Waverley Borough Council Mr Newland's caravan was in the curtilage of a dwelling house. The caravan was used for a purpose incidental to the enjoyment of the dwelling-house, occupied by family. Mr Newland made adaptations to his caravan, which deprived it of transportability (a vital definitional criteria for a caravan). Held: Mr Newlands's home became a dwelling house building as a result.

Conclusion: On the facts provided in the Planning Statement, I do not consider what is proposed falls within the definition of a building or the carrying out of building operations.

Does the proposal amount to a material change of use of the land?

The commentary to the planning encyclopaedia states 'use within curtilage of a dwellinghouse: use of a caravan within the curtilage for purposes incidental to the enjoyment of the dwellinghouse falls within the primary use of the dwellinghouse, and does not require separate planning permission. Paragraph 1 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 (1960 Act) is therefore not included in those paragraphs for which permitted development rights are given by Schedule 2 Part 5 Class A of Town and Country Planning (General Permitted Development) Order 1995 (GPDO).

Conclusion: Provided the proposal is a caravan and used for purposes incidental to the enjoyment of the dwellinghouse, planning permission is not required (the plans show the proposal is to be sited within the curtilage of the dwellinghouse).

Is the proposal a caravan with planning terms?

Article 1(a) GPDO defines "caravan" as having the same meaning as for the purposes of Part I of the 1960 Act.

Section 29 of the 1960 Act provides interpretation for the purpose of Part I. S29(1) "caravan" means 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—
(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
(b) any tent.

Caravan Sites Act 1968
s13.— Twin-unit caravans.
(1) 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 as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960

by reason only that it cannot lawfully be so moved on a highway when assembled.

(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely—
(a) length (exclusive of any drawbar): 65.616 feet (20 metres);
(b) width: 22.309 feet (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): 10.006 feet (3.05 metres).

The Planning Statement accompanying the application states:
The structure is to be used as a granny annex for the family's elderly mother, for human habitation;
The structure is capable of being moved from one place to another, as it will be delivered to the site by lorry and be capable of removal (it will not be fixed to the ground) service connections can easily be reversed and are therefore minimis;
The structure can be lifted in as a single unit or in two sections;
The structure can be removed from the site as a single unit or in two sections and transported by lorry; and
The structure conforms to the dimensions set by the 1968 Act.

Conclusion: The structure is a caravan in planning terms.

Will the caravan be used for purposes incidental to the enjoyment of the dwellinghouse?

The Planning Statement sets out that:
The structure will provide human habitation for the elderly mother of the family occupying the dwelling house;
There will remain a close link between the user of the structure and occupiers of the dwelling house, with the elderly relative relying on the occupiers of the dwellinghouse for day to day living support;
The structure will not have its own curtilage; postal address; separate bills;
The planning unit will not change;
The structure lacks permanence and attachment and can be removed from the land; and
Highlights Planning Inspector decisions/caselaw that support the use proposed as 'incidental' to the enjoyment of the dwellinghouse.

Conclusion: I have found no authorities that contradict the authorities quoted in the Planning Statement, and therefore on these facts, I consider the use incidental to the enjoyment of the dwellinghouse.

Should the LDC be granted?

Yes. The proposal does not amount to development requiring planning permission.

The proposal to use the mobile home as a granny annex is incidental to the dwelling house, it is not operational development, it does not require separate planning permission.

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, No 33 Springate 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 applicant's Planning Statement confirms that the mobile home would fall within the definition of a caravan.

The applicant states that the unit would not be permanently fixed to the ground (it would sit on padstones), only services would be connected (with utility services shared) and would not be provided with its own curtilage or a separate postal address. The applicant has also stated that the mobile home can be removed from the site when no longer needed. Appeal decisions have established that this can take place by removal from the site via a crane.

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.33 Springate Road. The issue is therefore whether the use of the land for the siting of a mobile home as a granny annexe is ancillary to the residential use of the main building.

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.33 Springate 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), and included within the applicants’ Planning Statement. The Statement also refers to other cases, including:

17 Chantry Road, Worthing (AWDM/1723/15)
24 West Way, Worthing (AWDM/1221/14)
31 The Gardens, Southwick (AWDM/1181/13)

In terms of the proposed mobile home at 33 Springate 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, 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 occupier –dependent relatives - would have a close functional link with the occupiers of the principal dwelling, would share the residential occupation and enjoyment of the principal dwelling and would rely on the family members occupying the principal dwelling for support for day to day living needs, the applicant is effectively stating that it will not function as a separate dwelling.

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 the elderly mother who needs daily support, 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 Statement. 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 mobile home within the curtilage of the dwelling house and its use as a granny annex for dependent relatives, in accordance with the terms described in the Planning Statement and as shown on drawings 2716.18-HTB-PLPL Rev. No. 1, HTBMH, 2716.18 – HTB – PLEL Rev No. 1, 2716.18 – HTB – PLBP Rev No. 1, 2716.18 –HTB- PLLP Rev. No. 1, 2716.18 – HTB – PLBAY Rev.No.1 received 1 May 2018 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: Peter Barnett Date: 25 May 2018

Authorised by: Gary Peck Date: 25 May 2018