Development Management - Delegated Officer Report

Application Number: AWDM/0157/19 **Recommendation – Issue Certificate**

Site: **53 Underdown Road, Southwick**

Proposal: **Application for Certificate of Lawfulness for proposed siting of a static caravan in rear garden for use by family member**

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, within a terrace of two storey dwellings.

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 mobile home in the rear garden for use as an annex for an elderly relative.

Precise details of the actual model of the mobile home have not been submitted as the applicant has not bought it yet, but the agent has advised that similar models measure 10ft wide (3.05m), 32ft long (9.75m) and 8ft high (2.43m) measured internally. No floorplan has been submitted.

The mobile home would be placed into the garden by crane and would not be fixed to the ground. Services would run from the existing house and would be shared.

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:

The issue is whether or not the placing of the caravan constitutes a change of use and therefore requires planning permission.

The proposed caravan is a mobile home measuring 10 ft x 32 ft. No height has been provided. The caravan is to be transported to the property and craned into position. The Caravan Sites and Control of Development Act 1960 defines a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed or by being transported on a motor vehicle or trailer) or any motor vehicle so designed or adapted. From the information provided, it appears that the proposed mobile home would fall within this definition.

The definition is supplemented by the Caravan Sites Act 1968 which states that a caravan must have a maximum size of 65.616 ft in length, 22.309 ft in width and 10.006 ft in height measured internally at the lowest point. The dimensions provided fall within the length and width criteria. Whilst it is unlikely that the maximum height will be exceeded, this should be checked with the applicant to ensure it comes within the height criteria. If it does not exceed the maximum dimensions, it will meet the size criteria for a caravan.

There are also further requirements regarding twin unit caravans. The photograph provided appears to show a single unit. However, the applicant should be asked to confirm if the caravan is of single construction, is a twin unit or is otherwise constructed. On the basis that the unit is a single unit, the proposed mobile home will fall within the legal definition of a caravan. If the construction is a twin unit or other type of construction, please let me know and I will reconsider this.

Although there are some circumstances where a caravan could be considered a building for planning purposes, this is quite unusual and I don't think would apply here. The tests for establishing if something is a building are:

1. Whether it is of a size that is required to be constructed on the site as opposed to being brought to the site – it appears that the mobile home will be constructed offsite and craned into the garden and therefore it will not fulfil this test.
2. Degree of permanence – there is no information regarding this in the supporting statement. However, I am extremely doubtful that a mobile home of the type envisaged would be considered as a permanent structure even if it remains in situ for several years. It is not of a construction that will last in the same way as a brick built building.

3. Whether it would be permanently attached to the ground - the caravan is not to be fixed to the ground and is therefore capable of being removed. The services are to be run from the house and separate services are not to be installed – it appears that the caravan will not be permanent.

I am therefore of the view that the caravan is a caravan and not a building.

The proposed caravan is to be situated in the rear garden of the property and would be used by the applicant's father. The supporting document does not provide any further details about how the proposed living arrangements will work in practice. This is important as there must be a functional link between the dwelling and the caravan in order to show that its use is ancillary. The applicant should therefore be asked to provide further detail about how the family intends to use the accommodation. Will the father be using the bathroom in the dwelling? Where is he eating? Where is his food being prepared? I imagine that he will be making use of the main dwelling on a regular basis and the mobile home will be predominantly used as sleeping accommodation and for some privacy at other times. However, to ensure that we have a full picture, this information should be requested. Provided that we are satisfied that there is a functional link between the dwelling and the caravan, the use will be ancillary. Even if the mobile home is capable of being used as a separate independent unit, provided we believe that it will be used for an ancillary purpose, this will be acceptable.

In short, whilst there are a couple of matters to check with the applicant, it appears that the mobile home will be classed as a caravan and will be used for a purpose ancillary to that of the main dwelling. On that basis, the certificate of lawful use should be granted.

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 53 Underdown 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 states that the unit would not be permanently fixed to the ground (it would sit on concrete paving slabs), only services would be connected (with utility services shared). It is to be craned off a lorry and lowered whole into the garden.

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.53 Underdown 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.53 Underdown 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)

In terms of the proposed mobile home at 53 Underdown 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 applicant's agent has confirmed that "*the (mobile) home is to give the applicant's father some independence but he will be eating with the family in the main house. The kitchen within the mobile home will be for the provision of drinks and snacks, more than full on meals. He will still share the living spaces in the house but will be able to entertain friends and family in the mobile home if he should wish. It will allow independent living whilst still being cared for by the family and being able to share the family house*."

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 –a dependent relative - 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 father 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 a dependent relative, in accordance with the terms described in the Supporting Statement and the emails from Simon Moore received 13 February and 15 February 2019 and as shown on drawing no. 3001-20Rev A received 31 January 2019 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: 19 February 2019

Authorised by: Gary Peck Date: 20 February 2019