Exp. date – 14/11

DELEGATED APPLICATIONS ASSESSMENT SHEET

Application Number: **Recommendation – Permit**
AWDM/1181/13

Site: 31 The Gardens, Southwick

Proposal: Application for a Lawful Development Certificate for stationing of mobile home in rear garden to be used as granny annexe.

SITE AND SURROUNDINGS:

The application site is located in a residential area in Southwick, dominated by post-war semi-detached and terrace houses. No 31 is a mid-terrace two storey dwelling with a long rear garden, which is subdivided by a vehicular access which serves No s 29-63 The Gardens. This is classified as an 'Alley' (single carriage way).

An existing single storey rear extension to the dwelling received Building Regulations approval in 1983. The rear of the garden area immediately behind the property is bounded by a close boarded fence. The rear section is bounded by a 1m close boarded fence on the side boundaries and a higher trellis at the rear. A garage sits on the front (southern) boundary with a car-port canopy extending across the remaining width of the plot.

The rear of the plot backs on to the railway line. There is a greenhouse behind the garage and at the far rear of the garden a summer house on raised decking. Adjoining properties have various structures within their rear gardens. It has been accepted practice that many of these are 'permitted development' and consequently it follows that the rear section of these gardens forms part of the curtilage of the respective dwellings.

PROPOSAL:

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 8.2m (length) x 4.5m (max width) x 3.3m (max height). It would be sited at the far north of the northern section of the garden, replacing the existing summer house. The applicant has stated that the unit would be occupied by a dependent relative of the family of 31 The Gardens with which, according to the applicant's Planning Statement, it would maintain close functional links in respect of sharing utility services, a common address and curtilage. The layout of the floorplan shows both a kitchen and a bathroom and the unit, on the face of it, is capable of functioning as a separate dwelling, particularly in view of the capacity for a separate access

from the alley way.

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 have made the following comments:

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.

As stated in my email, I would advise that the certificate makes reference to the Planning Statement submitted, as that provides details of the use of the mobile home as a granny annex within the curtilage of the dwellinghouse, being incidental to the enjoyment of the dwelling house, and that the mobile home falls within the planning definition of a caravan.

Following further discussion, Legal made the following additional observations:

I understand that the Council has accepted permitted development in the garden across the alley/single carriageway, as being within the curtilage of the adjacent dwelling house, in a number of cases along The Gardens. On that basis, in my view, it would be

inconsistent in decision making for the Council to not hold the same true in this case.

As the decision is that this garden falls within the curtilage of the dwelling house, my memo advice to you dated 15 October 2013 stands.

You expressed concern if the applicant does not use the caravan as set out in the Planning Statement. Legislation provides for how an LDC can be revoked in certain circumstances. In addition, it is also a criminal offence to make a false or misleading, in a material particular, statement, in the magistrates' court punishable by up to £5000 fine, in the crown court to prison not exceeding 2 years.

ASSESSMENT:

The legal tests in this instance are related to, firstly, whether to 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 31 The Gardens 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 confirmed that the 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 Sits 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,

which is likely to be a requirement in this instance due to the layout of the existing site and its relationship with the narrow access.

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

Use of the Land

The alley behind that divides the garden of No 31 is a publically accessible single carriageway and physically divides the garden. However, legally both areas are still within the same residential curtilage pertaining to No 31 The Gardens. 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 31 The Gardens. 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 a recent 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 APP/K3605/X/12/2181651 15th April 2013).*

In terms of the proposed mobile home at 31 The Gardens, 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 – 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 mother who needs daily support, then there may be options available to the Council to take enforcement action.

Conclusion

Having taken into account it's proposed 'permanence' and 'attachment', the proposed structure would not fall within the definition of a building operation, The proposed mobile 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 dependant relative, in accordance with the terms described in the Planning Statement/additional information 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).

Informatives

The certificate of lawfulness hereby permitted is subject to the mobile home being installed, maintained and used in accordance with the submitted details, including drawings HL1838/E, HL1838/P, HL1838/L HL1838/B the Planning Statement and Kim Blunt's email of 21st October 2013.

DELEGATED

Case Officer Sign	Jo Sanderson	Date 6th November 2013
Authorising Officer Sign	Jo Morin	Date 8 Nov 2013