Development Management - Delegated Officer Report

Application Number: AWDM/1487/24 **Recommendation – Issue Certificate**

Site: **53 The Gardens, Southwick**

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

Date of site visit: Visited in connection with previous application

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 a family member. The application property has 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).

The proposed mobile home is L-shaped with a length of 11.4m and width of 6.5m at its widest. It is 2.6m tall above ground level, with an internal height of 2.3m. The floor plans show there being two bedrooms, bath/shower room and open kitchen/living room.

The mobile home is to be placed on a screw pile foundation and not fixed down. It will rest on these foundations under its own weight. It is to be assembled in two distinguishable parts on site.

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

AWDM/0714/24 - Outbuilding in rear garden to form annex accommodation – withdrawn

AWDM/1181/13 - Lawful development certificate for the stationing of mobile home in rear garden to be used as 'granny annexe' by a dependent relative (No. 31) - approved

Consultations

Legal have made the following comments:

Advise granting the Certificate. On the balance of probabilities, the proposed mobile home is a caravan as defined under the Caravan Sites Act and its installation and stationing on the land does not constitute development under s.55 TCPA 1990. The use of the mobile home as living accommodation for the applicant's mother is a purpose incidental to the enjoyment of the host dwellinghouse on the land and as such does not constitute development under s.55 via a material change of use.

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 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 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 and would be constructed in parts on site.

Services would be connected and it 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 by crane when no longer needed.

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 53 is a publicly accessible single carriageway and physically divides the garden. However, legally both areas are still within the same residential curtilage pertaining to No 53 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.53 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 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 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, the applicant's agent has confirmed that "*The proposal is and will be used in a manner incidental to the main property and will not be a separate dwelling. Any use of the caravan/mobile home will depend on a connection with the main dwelling as it will not be separately metered. It will continue to share the services such as washing, internet, phone line and television. It will have the same address and post box. It will not have an independent curtilage and the garden will be shared and only used by the occupants and their guests who will have access to both the mobile home and the main dwelling.*
To confirm there will be no separate;
• *Address*
• *Post Box*
• *Utility meters*
• *Services such as internet, phone line and television*
• *Parking*
• *Garden area or curtilage, and*
• *Access*
It is evident that without the main dwelling the mobile home would not be able to function and the application site would remain a single planning unit.."

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 Planning Statement and plans 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: 17 December 2024

Authorised by: Jo Morin Date: 18.12.2024