Expiry Date - 18/09/2023

Development Control – Delegated Officer Report

Application Number: AWDM/1032/23 **Recommendation – APPROVE**

Site: **144 Nelson Road Worthing West Sussex BN12 6EN**

Proposal: **Application for Certificate of Lawfulness for proposed use of land to station a mobile home granny annexe for use incidental to the main dwelling**

Site visit: 30/08/23

Site and Surroundings

The application site is located to the east side of Nelson Road within a residential area of Worthing. The property comprises a semi-detached house with brick elevations and a hipped roof. There is a good size garden to the rear enclosed by fencing and hedging with a shed to the side. There is a low wall to the front with a driveway providing parking for 2 vehicles.

There is a large tree to the neighbouring garden (south) but this is not a protected tree. The site is not within a conservation area and is not a listed building.

Proposal

A Lawful Development Certificate is sought 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 an L-shaped mobile home measuring 11.216m long x 3.808m wide, extending to 6.249m wide at its widest point x 3.514m high, and with a maximum internal floor to ceiling height of 3.027m. The mobile home would be sited in the north-east corner of the garden with its longest side adjacent to the north boundary and the L-shaped bay facing the south boundary.

Internally the accommodation would provide a bedroom, kitchen/lounge/garden room, shower room and storage/hobby room. The unit would be accessed via doors to the south elevation and has window openings to all elevations. This space would be capable of functioning as a separate dwelling however the only access is via the garden of the existing dwelling.

The accompanying planning statement states that *'the mobile home would be occupied in conjunction with the applicants' occupation of the main dwelling on the basis of providing incidental accommodation for Mr Garepo's mother (the grandmother) for mutual practical support and companionship. The applicants*

and the grandmother would occupy the application property as a single dwellinghouse and planning unit in single family occupation.

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 applicants' mother would occupy the mobile home as her living accommodation and she would spend time with her son and daughter-in-law and grandchildren in the main house each day including for meals and socialising. The grandmother would share the residential occupation and enjoyment of the principal dwelling and would also assist the applicants with childcare and household chores in the main house and in the mobile home.

Other facilities would also be provided by the main dwelling including laundry.''

There would be no subdivision of the curtilage, and amenity space would be shared. The mobile home unit would not be attached to the ground or hard-standing in anyway, only services would be connected. The mobile home would share the existing dwelling's utility services and would be jointly billed.

The unit is manufactured so that it would be delivered to the site on a lorry and capable of removal. The mobile home can be removed from the site when no longer needed.

Relevant Legislation

The Town and Country Planning Act (1990) - Section 55 - Meaning of 'Development' comprises of two elements:

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

or

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

Caravan Sites and Control of Development Act 1960 (1960 Act) – Section 29(1) – Definition of a Caravan, 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."

The Caravan Sites Act 1968 - Section 13 (1) – Definition modified (twin-unit caravans) 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."

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.

Planning Assessment

The planning merits of the proposal are not under consideration as this is an application for a Certificate of Lawfulness. Matters relevant to the Certificate of Lawfulness are considered in the assessment below.

The legal tests in this instance are related to, firstly, whether to the proposed mobile home constitutes '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).

Permanent caravan sites (including the placement of just one "caravan") require both planning permission and a licence granted under the Caravan Sites and Control of Development Act 1960. Schedule 1 of the Act provides a number of exemptions, including at paragraph 1 – use within curtilage of a dwellinghouse.

The Planning Encyclopaedia at para RB-2088.2 confirms that the use of a caravan within the curtilage for purposes incidental to the enjoyment of the dwellinghouse falls within the primary use of the dwelling house and does not require separate planning permission.

The issues are therefore:

I. Whether the proposed mobile home falls within the definition of a caravan 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, 144 Nelson 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' and in doing so, therefore necessary to consider whether the mobile home is a 'caravan' for the purposes of the Caravan Sites Act 1960. The definition of caravan is provided in section 29(1) of the Caravan Sites Act 1960 as follows:

"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

Excluded from this definition is a "twin-unit caravan" which is later defined under the Caravan Sites Act 1968 as follows.

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): 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

The plans and supporting information submitted for this application confirm that the length, width and internal height of the proposed mobile home would be within the limits set out in the Caravan Sites Act 1968 Amendment Order (2006).

The documents confirm that the Homelodge unit would not be permanently fixed to the ground, and that it would be fitted with metal shoes resting on padstones and is not bolted or fixed to the padstones. It is also stated that a timber strip forming a 'skirt' is for aesthetic purposes only and as shown on the submitted section drawing is not fixed to the ground. Only services would be connected (with utility services shared) and the mobile home would not be provided with its own curtilage or a separate postal address.

The Planning Statement confirms that *the mobile home will be brought to site by lorry and stationed directly on to the padstones with no fixing thereto. The manufacturers letter and methodology at Appendix F confirms the Homelodge accommodation range are engineered and constructed so that they could be transported, for instance by a lorry or low loader, fitted with 'crane assist' to load and unload as a single bay unit or twin bay units. 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, in one piece, and meets the mobility test.*

Further supporting information has been provided confirming that the specific type of mobile home proposed is capable of being lifted by a crane into the garden of 144 Nelson Road in two bays and once assembled the Homelodge unit can be lifted as one volumetric unit and is capable of being moved by road when assembled.

The preferred delivery assembly method has been provided:

Assembly method 1 *– would be to assemble Bay 1 and Bay 2 (the two sections) in our factory and deliver them both to the site as two separate bays (sections) by lorry or low loader fitted with crane-assist. The two bays (sections) would be lifted off the lorry or low-loader by crane assist and into the rear garden with the final action of assembly being to bolt the two bays (sections) together. Once assembled, the proposed unit can be lifted in one piece as a single volumetric unit.*

Assembly method 2 *– Health & Safety regulations require that 'risks' be designed out of processes wherever possible, so to fulfil this directive and being in line with well-established case law and appeal cases such as the West Devon and the Poole appeal decisions provided, Bay 1 and Bay 2 (the two sections) will be delivered to the site in prefabricated form by lorry and each bay (section) will then be assembled on site independently of each other, the final action*

being to bolt the two completed bays (sections) together. Again, once assembled, the proposed unit can be lifted in one piece as a single volumetric unit.

'For clarity whether the unit is installed using method 1 or method 2 both units would be identical and are structurally capable of being removed from site as a single volumetric unit as shown by the provided Caravan Removal Methodology from site (craning a Premier as a single volumetric unit). This has been confirmed by an independent crane engineer and independent structural engineer.

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The unit proposed will be connected to the same electricity supply and foul drainage serving the dwelling using quick release fittings.'

The Caravans Regulations allow for a mobile home to be delivered to a site in smaller parts but it will then need to be assembled either as a single bay unit or, if it is a twin-unit, 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.

It is noted that an almost identical proposal (for stationing of a mobile home in the rear garden to be used as a granny annexe) was granted a Certificate of Lawfulness under application AWDM/0684/18 at 2 Poulters Lane, Worthing. The mobile home supplied for the above application is from the same company as proposed for the current application and the same evidence and supporting information has been provided together with a detailed planning statement and analysis of relevant case law and appeal decisions.

Comprehensive legal advice was sought on the 2018 application that applies equally to the current application under consideration. One of the key factors under the legislation is that the lodge is *capable of being moved by road when assembled*, regardless of whether the applicant goes on to transport the unit as one or as two or more sections.

Photographic evidence of a similar unit being transported by lorry has been provided. The manufacturers have provided further confirmation that the twin (two) bay unit proposed for the property at 144 Nelson Road can be brought to the site by lorry or low loader and is thus capable of being moved by road when assembled.

Furthermore, the letter from All Haulage Ltd, submitted in relation to the 2018 application at 2 Poulters Lane stated that *'The proposed mobile home is relatively small compared to others I have transported and I can confirm that I have transported mobile homes for Homelodge Buildings Ltd., that are larger than this on the public highway. I am happy to confirm that the proposed mobile home is capable of being transported as one volumetric unit on the road.'*

Positive confirmation has been provided that the particular mobile home proposed is capable of being transported by road in one volumetric unit and is therefore a "caravan" under the relevant legislation.

The supporting information confirms that the mobile home would be in situ as long as is necessary to meet the needs of the family occupying the main dwelling. This does not mean that the unit will remain permanently. In the circumstances of this case, there is likely to be an increasingly dependent relationship between the mother and the applicant in the main dwelling house. The Planning Statement confirms '*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 view of the above it is considered that the proposal would not constitute 'operational development' and is therefore not a building requiring planning permission but is a 'caravan' under the relevant legislation.

Use of the Land

The area where the mobile home is to be sited is within the residential curtilage of 144 Nelson Road, Worthing. The applicants and the applicant's mother would occupy the application property as a single dwellinghouse and planning unit in single family occupation. There would be no physical separation or subdivision of the curtilage, all amenity space would be shared and there would be free movement and use of both the main house and the mobile home by the applicant's mother and applicant.

The relevant exemption from having to obtain planning permission for a caravan requires that the use of the caravan is 'incidental' to the enjoyment of the main dwellinghouse.

The Planning Statement has confirmed that:

- *The mobile home would be occupied in conjunction with the applicants' occupation of the main dwelling on the basis of providing incidental accommodation for Mr Garepo's mother.*
- *The applicants' mother would occupy the mobile home as her living accommodation and she would spend time with her son and daughter-in-law and grandchildren in the main house each day including for meals and socialising.*
- *The applicants' mother would share the residential occupation and enjoyment of the principal dwelling and would also assist the applicants with childcare and household chores in the main house and in the mobile home.*
- *Laundry facilities would be shared with the main dwelling.*

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 an annexe must share the same access; parking area and garden and be in same ownership as the principal dwelling. All of these requirements are met by this application.

The proposed mobile home could co-exist and function alongside its neighbours with no connection and little impact on 144 Nelson Road due to the facilities that are provided within the mobile home. Therefore, in this instance, the question of whether the proposed use is lawful lies heavily on how the proposed mobile home would actually be used in relation to the parent building and whether this use is incidental.

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 more 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 another case *(27 Elmfield Avenue, Teddington APP/L5180/X/15/3140569)*, where the appeal involved another 'Homelodge' mobile home for parents where the son and daughter in law would occupy the main house and provide care. It was deemed that a completely separate self-contained dwelling use was not being provided as there would be sufficient connection and interaction between the mobile home and main house.

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 principle in planning case law that additional living accommodation, whether by conversion or a mobile home can be incidental to a principle dwelling even if capable of semi-independent occupation. So, permission is not required for the mobile home in such circumstances.

The supporting information indicates that there will be a close link between the mobile home and the main dwelling, with its occupants providing care for the applicant's mother, sharing household chores, taking meals together, socialising, and using laundry facilities in the main dwelling. Use of the hobby/storage room would be for both the occupants of the main dwelling and the annexe, as ancillary space.

Given that the mobile home would be sited within the curtilage of the principal dwelling, sharing utility services, amenity space, parking and access, maintaining a close functional link with the occupiers of the principal dwelling and sharing the residential occupation and enjoyment of the principal dwelling

with an inter-reliance between the family members for support for day to day living needs, the mobile home will not function as a separate dwelling. On this basis, the use of the mobile home would be incidental to the enjoyment of the main dwelling house.

The only concern is then whether use of the mobile home in this manner would be upheld. However, 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 a family member, then there may be options available to the Council to take enforcement action. The nature of the use and the specifications of the mobile home itself combine to allow the lawful development certificate to be issued in this circumstance; any change to the details contained in this proposal could deem it to unlawful at any time.

Conclusion

The proposed unit falls within the definitions of a 'caravan' as stated in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. Having taken into account it's proposed 'permanence' and 'attachment' the stationing of such a structure within the curtilage of a dwelling does not fall within the definition of 'operational development' *(being "the carrying out of building, engineering, mining or other operations in, on, over or under land"),* 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 use of the proposed annexe would be incidental to the enjoyment of the dwelling house at 144 Nelson Road due to the functional relationship between the mobile home/granny annexe and the main dwelling, as confirmed by the detailed information provided in the submitted Planning Statement. As such, the proposal does not amount to development requiring planning permission and the LDC can be granted.

Recommendation

Issue a Certificate of Lawfulness for Proposed use of land, the submission of a planning application for the works will not be required.

Reasons for Recommendation

The proposed siting of a mobile home within the curtilage of the dwelling house and its use as a granny annexe, in accordance with the terms described in the Planning Statement and additional supporting plans and 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

1. The certificate of lawfulness hereby permitted is subject to the mobile

home being installed, maintained and used in accordance with the submitted details and being capable of being transported by road when assembled.

Case Officer: Amanda Haslett Date: 04/10/23

Authorised by: Jo Morin Date: 04.10.2023