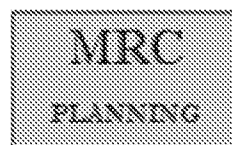


Application for Certificate of Proposed Lawful Use for the siting of a Caravan/Mobile Home for ancillary residential use in garden at 40 Barrack Lane, Aldwick, PO21 4DB

Statement of Evidence



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Statement of evidence, 40 Barrack Lane, Aldwick, PO21 4DB
MRC PLANNING April 2021

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1. INTRODUCTION

- 1.1 This application is for a Certificate of Lawfulness under section 192 of the Town and Country Planning Act 1990 (as amended) for the proposed use of land comprising the garden of 40 Barrack Lane, Aldwick, PO21 4DB, for the siting of a caravan/mobile home in the position indicated on the accompanying plan for ancillary residential use.
- 1.2 Under section 192 of the Act an application may be made to ascertain whether any proposed use of buildings or other land would be lawful if instituted or begun at the time of the application. If, on an application under this section, the Planning Authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted, or begun at the time of the application, they should issue a Lawful Development Certificate to that effect.
- 1.3 This is not an application for planning permission and the Development Plan considerations do not fall to be considered in an application for a Certificate of Lawfulness for a proposed use or development. The current application falls to be determined having regard solely to matters of evidential fact and law, with the onus of proof on the applicant, there is no requirement for it to be publicised under the provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Similarly, as the policies of the Development Plan (or the National Planning Policy Framework) are not relevant to the determination of an application submitted under the provisions of Section 192, any concerns regarding potential impact on the character or appearance of the area are not matters that the Council can attach any weight to. The Courts have held that the relevant test of the evidence on such matters is the balance of probability, planning authorities should therefore not refuse a Certificate because the applicant has failed to discharge the stricter, criminal burden of proof beyond reasonable doubt. Moreover, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority has no evidence to contradict or otherwise make the applicant's version of events less than probable, this is not in itself a valid reason to refuse the application.
- 1.4 The meaning of development requiring planning permission is provided in section 55 of the Town and Country Planning Act 1990 (the Act) and means "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".
- 1.5 This Statement of Evidence will provide justification for concluding that the siting of a caravan/mobile home as proposed in the garden of the application dwelling, and for purposes ancillary to the main dwelling does not constitute operational development or a material change of use, as per section 55(2)(d) of the Act, which states that "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such" does not involve "development of land". As it is not "development" it can be carried out without planning permission.
- 1.6 In this statement, reference is made to mobile homes and caravans but for the purpose of planning law they are one and the same thing.

2 BACKGROUND

2.1 The application site comprises the dwellinghouse and its extensive curtilage at 40 Barrack Lane, Aldwick,. The house and rear gardens comprise a family home.

2.2 The caravan/mobile home is intended for purely ancillary residential use for the applicants' own family enjoyment. [REDACTED]

[REDACTED] the dwelling will therefore be occupied by Mr and Mrs L and S Goater, and Mrs Blatchford and the caravan/mobile home will be occupied by Andrew who will also share facilities within the family home. [REDACTED]

2.3 The proposal is to station a caravan/mobile home in the rear garden of the dwelling in place of the existing concrete sectional workshop shown in the photographs below which will be removed leaving a hardstanding on which the caravan will be sited. It will therefore be squarely located within the established curtilage of the single residential planning unit comprising the house and garden of 40 Barrack Lane, with access to the caravan/mobile home only possible through the house and garden.



Proposed location in place of workshop

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Proposed location in place of workshop



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- 2.4 The proposed caravan/mobile home is of a very similar size as the existing workshop and in a very similar position as is illustrated on the photographs above.
- 2.5 Plans and elevations of the caravan/mobile home also accompany the application.

3. USE FOR SITING OF A CARAVAN

- 3.1 Not all caravans/mobile homes take the typical form of a static or touring caravan. The definition of a caravan is provided in section 29(1) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) 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 but does not include:

Any railway rolling stock which is for the time being on rails forming part of a railway system, or any tent."

- 3.2 This definition has been modified by Section 13 (1) of the Caravan Sites Act 1968 ("The 1968 Act"), which deals with twin-unit caravans. This 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."

- 3.3 There is no requirement that a caravan must have wheels and no description as to how it should appear and from what materials it should be formed.

- 3.4 Furthermore Section 13(2) of the 1968 Act (amended October 2006) establishes 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.

- 3.5 The separate definition of a caravan relies upon the structures mobility which differentiates it from a building and it is long-established that the siting of a caravan usually involves a use of land, but the possibility of a caravan also being a building cannot be entirely ruled out however the statutory definition provides a strong indication that caravans of such size can be uses of land rather than buildings and they are generally being considered a chattel placed on the land. The caravan/mobile home proposed at this location meets this definition, it is not a building because of its impermanence and its mobility and would not amount to a physical attachment to the land and does not involve operational development.

4. EVIDENCE

4.1 In order for something to be considered a caravan/mobile home it has to meet three key tests as set out in the Caravan Sites Act (CSA), these are:

(1) Size;

(2) Mobility;

3) Construction.

4.2 **Size** – Section 13(2) of the CSA sets the dimensions for a twin unit caravan

Maximum CSA Requirement		Proposal
Length	20m	6.36m
Width	6.8m	3.92m
Internal Height	3.05m	2.3m (internal) (2.5m (external))

4.3 The proposal is therefore comfortably below the maximum permitted dimensions for a caravan.

4.4 **Mobility** - Section 13(1) (a) of the CSA 1968 indicates that a caravan is a structure which, "when assembled, [is] 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)".

4.5 The proposal will be placed on the existing hardstanding vacated by the removal of the sectional workshop structure rather than any deep foundation and it will rest under its own weight on adjustable feet designed to ensure level installation and to accommodate ground level changes.

4.6 Services will be linked to the caravan/mobile home, but these services can be disconnected easily and within minutes, so that if necessary, the services can be removed, and the structure can be lifted without structural damage. It is designed with a steel chassis, is constructed with very robust materials (powder-coated steel sections bolted together) and the manufacturer has experience of moving these structures by crane. There is in fact a thriving second-hand market for these structures which because of their robust and durable construction and external maintenance guarantee are often moved between homes or re-sold if no longer needed. In the case of *Carter and another v Secretary of State for the Environment and another* [1994] 2 EGLR 194, the Court of Appeal held that for the caravan to meet the mobility test the structure as a whole must be capable of being moved by being towed or transported on a single motor vehicle or trailer.

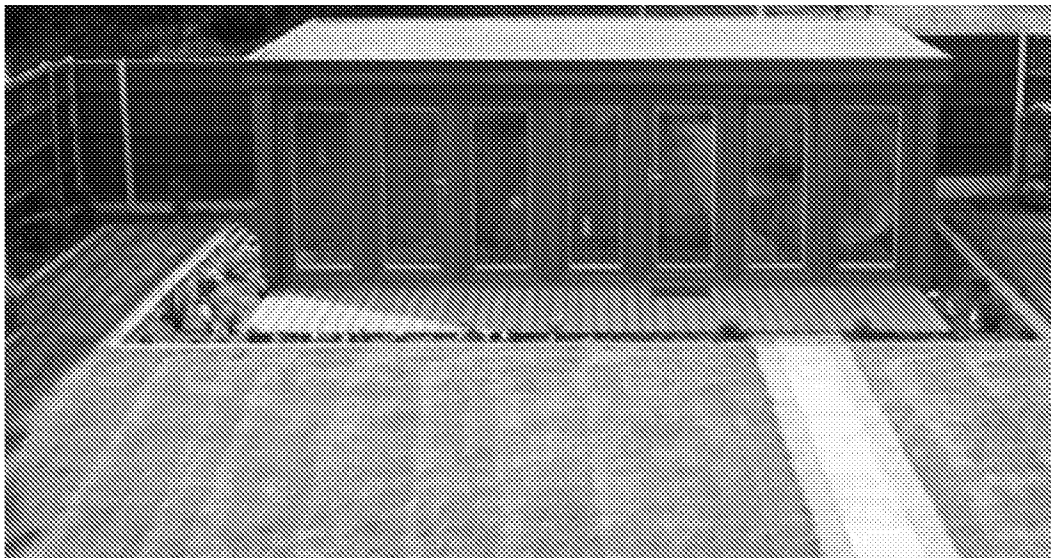
4.7 The caravan/mobile home is designed to be transportable and meets the second key test of the CSA. It must be capable of being moved, but it does not cease to be a caravan just because it is not moved. Nonetheless it is not intended to be a permanent addition to the land, it could be moved around this large garden and can be readily and simply removed if the needs of the family change and once it is no longer needed.

4.8 **Construction** – Section 13(1)(a) of the CSA 1968 says a twin-unit caravan is a structure designed or adapted for human habitation which—should be 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 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).

- 4.9 The proposal is largely pre-fabricated within the factory and then assembled on site over a very short period of time. Whilst it is common for most mobile homes to be delivered as a complete unit or as two halves that are then joined together on site, case law has established that there is no requirement that the process of creating the two parts must even take place away from site, or from each other. In *Byrne v SSE and Arun DC QED 1997* concerning a twin unit mobile home it was found that: 'Though the Park Home was delivered by lorry in many pieces, I see no requirement in section 13(1)(a) that the process of creating two separate sections must take place away from the site on which they are joined together. It is necessary only that the act of joining to two section together should be the final act of assembly.' In the West Devon Borough Council appeal case (Ref: APP/Q1153/C/08/2064995) attached at Appendix 1A the Inspector held that it was only necessary that, in the case of larger mobile homes, the act of joining the two sections together should be the final act of assembly. The same conclusion was reached in connection with the London Borough of Havering Case (Ref: APP/B5480/C/17/3174314) attached at Appendix 1B.

- 4.10 The photograph below shows a similar caravan/mobile home by the same manufacturer.



Representative image only

- 4.11 The caravan/mobile home is designed and constructed for human habitation, it is comfortably within the maximum size dimensions and is when finished capable of being moved, and thus meets the third key test of the CSA. It meets the definition of a caravan/mobile home.

5. USE

- 5.1 A caravan/mobile home which because of its mobility is not operational development may be sited within the curtilage of a dwelling without planning permission if its use is ancillary to the use of the dwelling. This would apply even if it had all facilities within it that enabled the occupier to live independently. In *Uttlesford District Council v Secretary of State for the Environment & White* [1991] which remains one of the leading cases in respect of the use of an existing building within the curtilage of a dwellinghouse, for the provision of ancillary residential accommodation, Mr Lionel Read QC (sitting as a deputy judge of the Queen's Bench Division) concluded that a building within the garden of a property could be used as an integral part of the main residential use, without this representing a breach of planning control (i.e., a material change of use). As he noted in his judgement:

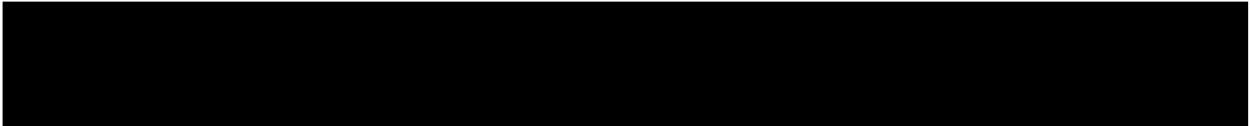
"... the elderly relative to be accommodated would have her own bedroom, bathroom and, I assume, lavatory, small kitchen, somewhere to sit and her own front door. To that extent she will be independent from the rest of the family. I find no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling."

- 5.2 Examples of this in connection with caravans include the East Hertfordshire appeal case (Ref: APP/J1915/X/11/2159970) where the inspector determined that a fully equipped mobile home sited in the front garden of a dwelling and occupied by the elderly parents of the applicants was lawful, and in Esher a mobile home to provide ancillary staff accommodation but with all the facilities of an independent home, was also found not to require planning permission (Appeal decision APP/K3605/X/12/2181651). A similar decision was reached by a planning Inspector in Teddington in 2016 (APP/L5810/X/15/3140569). More recently an enforcement appeal decision in Welwyn and Hatfield District confirmed a caravan with all facilities of an independent home sited within the curtilage of a dwelling house and occupied by the nephew of the owners was lawful (Appeal Decision APP/C1950/X/20/3247983) and at Heathfield House, West End Road, Tiptree CO5 0QH (APP/A1530/X/17/3177321) which acknowledges that "typically, a caravan will be equipped with all the facilities required for independent day-to-day living. It does not follow automatically that once occupied there must be a material change of use simply because primary living accommodation is involved. Much depends on how the caravan would actually be used". All decisions are attached at Appendices 1C, 1D, 1E and 1F and 1G.

- 5.2 The general approach of the Courts is that it is the actual use of a caravan/mobile home that is the determining issue, rather than its potential to be occupied as a self-contained residential unit for whilst there is no statutory planning definition of ancillary/incidental, there are a number of broadly accepted 'incidental' tests as arising from relevant case law.

These are:

- 1) **The relationship between the respective occupants** – in this case there is an immediate family connection between the prospective occupiers of the caravan/mobile home and the occupiers of the dwelling.



2) **The relative size of the house, its garden and the caravan** – the proposed caravan/mobile home is very modest in scale and significantly smaller than is permitted under the CSA. A photograph showing the proposed location of the caravan/mobile home is shown above.

3) **The relative scale of accommodation in the caravan/mobile home and the house** – the accommodation within the proposed caravan/mobile home is the minimum needed to provide for the needs of the family.

4) **The degree to which the caravan/mobile home is functionally connected to and subordinate to the use of the dwelling house** – the caravan/mobile home will clearly be subordinate to the use of the dwelling and curtilage and will not create a new planning unit. It will continue to share the services of the main house, it will have the same address, it will not have its own independent curtilage and will be used only by members of the family who will each have access to both the caravan/mobile home and the dwelling, sharing the garden, sharing day-to-day living facilities, interacting with each other throughout the day and evenings, socialising with and caring for one another. Whilst the proposed mobile home/caravan does have limited space for cooking there is not a full-size kitchen and tasks such as laundry and cooking will be shared with the dwelling house. Reference to the appeal decision at Welwyn Hatfield District (Appendix 1F) acknowledged that the applicant's nephew spent "most of his time in the caravan but remains close to and relies upon the members of the family". There will not be any physical or functional separation of the garden land and there is no intention to make the caravan available as a separate dwelling. The house and its garden will remain in use as a single dwellinghouse by a single family and the character of the usage will not change. The proposal will not result in a material intensification of use of the planning unit or create a new planning unit.

- 5.3 The application must be assessed on the basis of the stated ancillary use. Whilst the caravan might therefore be seen as being capable of independent occupation, this is not the basis upon which a Certificate is being sought. There will be no physical or functional separation of land, and no separate planning unit will be created. If the caravan is not used in an ancillary or incidental manner then it would not benefit from the Lawful Development Certificate and the Local Planning Authority would be able to explore any potential options for enforcement action, however provided the applicant occupies it as ancillary to the occupation of the dwellinghouse in the manner described it should be clear that no material change of use will occur. These issues are addressed in clear terms in the appeal decision at Buckingham Road, Bletchley, Milton Keynes (ref: APP/Y0435/X/15/3129568 attached at Appendix 1H). In this decision the appointed Inspector noted that whilst the proposed caravan would have contained all the facilities for independent living it would not have been used in that way. There would have been a functional link with the main dwelling. The use of the caravan in the manner described in the application would have been a use comprised part and parcel within the primary dwellinghouse use which was already taking place within the planning unit, as a matter of fact and degree. For this (and other) reasons it was found that, had the caravan been sited and its use instigated at the time of the LDC application, there would not have been a breach of planning control. The siting and use of the caravan for the purpose of providing additional living accommodation as described in the application would have been lawful as a matter of fact and degree.

6. CONCLUSION

- 6.1 By any reasonable interpretation the proposal falls within the definition of a caravan as stated in the 1960 and 1968 Acts and therefore its siting within the curtilage of 40 Barrack Lane is not operational development. It will site on the existing workshop hardstanding under its own weight, it will remain a movable structure and would not be permanently affixed to the ground with only services connected and as the use of the caravan will at all times be ancillary to the use of the planning unit it does not bring about a material change of use of the land.
- 6.2 It will be used for purposes that are ancillary to the use of and occupation of the main dwelling. It will use the main dwellings' services, it will have the same address, utility meters and there will be no division of the plot and most importantly, it will be occupied only by a single family. The planning unit will remain as one. There will therefore be no independent use and no new planning unit and so there is no material change of use requiring planning permission involved.
- 6.3 The judgment in *Gabbittas v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason not to grant a LDC, provided the Appellant's evidence is sufficiently precise and unambiguous. For the reasons explained above, and the case law and appeal precedents put forward, it is considered the correct application of planning law and judgement of the particular circumstances of this case on the basis of fact and degree, should result in the granting of a Certificate of Lawfulness for siting of the caravan/mobile home generally as described and shown on the submitted plans for purposes ancillary to the occupation of 40 Barrack Lane.

APPENDICES

Appendix 1A	West Devon Borough Council appeal case (Ref: APP/Q1153/C/08/2064995)
Appendix 1B	London Borough of Havering appeal case (Ref: APP/B5480/C/17/3174314)
Appendix 1C	East Hertfordshire appeal case (Ref: APP/J1915/X/11/2159970)
Appendix 1D	Esher appeal case (Appeal decision APP/K3605/X/12/2181651)
Appendix 1E	Teddington appeal case (Appeal decision APP/L5810/X/15/3140569)
Appendix 1F	Welwyn and Hatfield case (Appeal decision APP/C1950/X/20/3247983)
Appendix 1G	Colchester Borough Council (Appeal decision APP/A1530/X/17/3177321)
Appendix 1H	Milton Keynes Council (Appeal decision APP/Y0435/X/15/3129568)
Appendix 2	CONFIDENTIAL CLAIM FOR EMPLOYMENT AND SUPPORT ALLOWANCE DATED 2 AND 19 FEB 2021