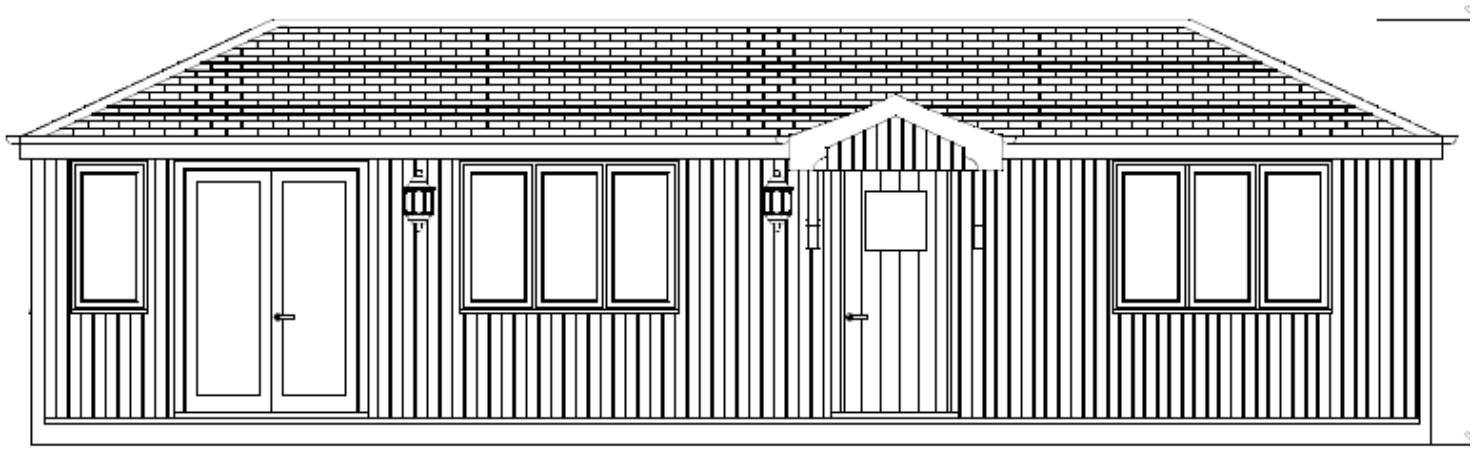

USE OF LAND TO STATION A MOBILE HOME (ANNEXE TO BE USED BY GRANNY)

PLANNING STATEMENT

12 Uttoxeter Road
Alton
Stoke-on-Trent
Staffordshire ST10 4AT

Kim Blunt
MSc Devt Planning

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APPENDIX C	Certificate of Lawfulness Ref: MO/2014/1714 dated 23/03/2015 for the site at The Oaks Charlwood Road Charlwood Horley Surrey RH6 0AJ
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APPENDIX E	Appeal Decision Ref: APP/K3605/X/12/2181651 dated 15 April 2013 for the site at Sandy Holt, 9 Blackhills, Esher, KT10 9JP

1.0 INTRODUCTION

1.1 This application is for a Certificate of Lawfulness for a proposed use or development under section 192 of the Town and Country Planning Act 1990 (as amended) to station a mobile home within the curtilage of the dwelling at 12 Uttoxeter Road.. The mobile home would be occupied in conjunction with the family occupying the main dwelling on the basis of providing incidental accommodation for one of the applicant's elderly parents in their later years.

1.2 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 elderly parents would occupy the mobile home as their living accommodation and their daughter and son in law would be close at hand to support them. The elderly parents would share the residential occupation and enjoyment of the principal dwelling and spend time with the family in the main house each day including for meals and socialising.

1.3 Other facilities would also be provided by the main dwelling including laundry. The elderly parents would also share the outside amenity space with the family occupying the main dwelling and, if they so choose, they could socialise together there as well. There would be no subdivision of the curtilage and the mobile home would not be rented out or sold off separately.

1.4 Recent examples of Certificates issued under identical circumstances are included at Appendices A to D. A recent example of a Certificate for similar circumstances, in that it is for a mobile home ancillary to the main dwelling, is included at Appendix E.

1.5 The property at 12 Uttoxeter Road is a semi-detached dwelling with private outside amenity space to the front and rear. The notional location of the mobile home is shown on the submitted location and block plans and is closely related to the main dwelling. The mobile home unit would not be attached to the ground or hard-standing in anyway.

2.0 THE PROPOSAL

2.1 This application is for a Certificate of Lawfulness for a proposed use or development under section 192 of the Town and Country Planning Act 1990 (as amended). It relates to the following:

- The use of land within the curtilage of the dwelling for the stationing of a mobile home to be occupied ancillary to the main house.

2.2 The key elements of the proposal are as follows:

- The unit would provide habitable accommodation
- The unit is manufactured so that it would be delivered to the site on a lorry and capable of removal
- It would not be permanently affixed to the ground, only services would be connected
- The use of the land would be ancillary to the dwelling at 12 Uttoxeter Road
- The mobile home would be occupied by the dependant relativs,, specifically the elderly parents of the family occupying the dwelling at 12 Uttoxeter Road
- The occupiers would retain their close family links with their daughter and son in law occupying the main house and who they will rely on for support for her day to day living needs
- The mobile home would not be provided with a private curtilage
- The mobile home would not have a separate postal address
- The mobile home would share the existing dwelling's utility services and would be jointly billed
- There would be no change to the planning unit
- The mobile home can be removed from the site when no longer needed

2.3 It is important to bear in mind that this is not an application for planning permission and the Development Plan considerations do not fall to be considered in a Certificate of Lawfulness for a proposed use or development.

3.0 GROUNDS ON WHICH A CERTIFICATE IS SOUGHT

3.1 Section 192 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) provides for any person wishing to ascertain whether a proposed use of land is lawful to submit an application for a Certificate of Lawfulness for a proposed use or development. This application is submitted under section 192(b) on the following grounds.

3.2 In this statement reference is made to mobile homes and caravans for the purpose of planning law they are one and the same thing. Planning law recognises that it is not the mobile home or caravan itself that requires planning permission but the use of land for stationing them thereon.

Legislation – Development requiring planning permission

3.3 The meaning of development requiring planning permission is provided in section 55 of the Town & Country Planning Act 1990 and comprises 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."

Caravans and mobile homes

3.4 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."

Please note that the definition relates to any structure and is not limited to what might in the ordinary sense of the word be thought of as a caravan. There was no description of the materials for such a structure. There was also no requirement that such a structure must comprise one with wheels for movement and transportation as the definition includes transportation on a motor vehicle.

3.5 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."

Again, it should be noted that the definition relates to a structure and there is no description as to what that structure should look like. Neither is there any requirement that the structure can only comprise one with wheels. It remains a caravan or mobile home if it can be transported on a motor vehicle.

3.6 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.

Whilst the internal height is specified there is no external roof height.

3.7 For planning purposes caravan (and mobile home) has the same meaning as that in the 1960 & 1968 Acts. So far as planning law is concerned, a mobile home comes within the legal definition of a caravan where it meets the tests, as set out by the Acts (as above) being:

i) it provides habitable accommodation
ii) it is within the maximum dimensions provided by the 1968 Act
iii) construction and
iv) mobility which in this context means the mobile home must be capable of being moved when assembled from one place to another. This means that it cannot be fixed to the ground.

3.8 The legal definition has been found to be wide enough to include structures and erections which might ordinarily be regarded as a building, but the Courts, as in *Wyre Forest DC v SOS (1990)*, have decided that if something falls within the statutory definition of a "Caravan" as provided by the 1960 & 1968 Acts it cannot also be a "Building" because of its element of mobility. The two definitions are mutually exclusive.

Operational Development

3.9 The matter of whether a structure constitutes operational development requiring planning permission is based on the first element of the definition provided in s55 namely "the carrying out of building, engineering, mining or other operations in, over or under land'.

3.10 The House of Lords decision in *Wyre Forest DC v SOS & Allens Caravans Ltd* is the standard authority for using the statutory definitions provided within the 1960 & 1968 Acts and not the ordinary everyday meaning of the word, to determine whether in planning terms a lawful 'caravan' has changed into something that is not a caravan. (Development Control Practice (DCP) 4.353). Permanent works, such as an extension or large porch, which fix the mobile home to the ground, could mean that it would no longer come within the legal definition and could as a consequence be treated as a building.

3.11 The appeal court decision in Barvis Ltd v SOS (1971) defined the tests of what constitutes a "building" being size, permanence and degree of physical attachment and is a matter of fact and degree.

3.12 A caravan conforming to the statutory definition provided by the 1960 & 1968 Acts (where it meets all 4 tests listed at i) to iv) at paragraph 3.7 above) is not a building, specifically because:

- The size is limited by the maximum dimensions set out in the 1968 Act and that it must be lawfully transportable when assembled as a single unit or in two parts
- It is not attached to the ground by permanent works. The connection to services can just as easily be reversed and has been found by the courts to be de-minimis
- It is a temporary structure and can be removed when no longer needed

And is therefore considered to be a chattel placed on the land.

The use of land

3.13 Case Law such as in ***Measor v. SSETR [1998]*** and appeal decisions, such as for 4 Waterworks Cottages in Sawbridgeworth at Appendix A, reflect the longstanding assumption in planning law that stationing a caravan is a use of land rather than a form of operational development. Essentially, the line which they take is that once it has been decided that a structure falls within the definition of caravan, it requires something over and above the fact that it sits on a firm foundation, has been connected to services and is unlikely to move, before it can be classified as "operational development".

3.14 A caravan is by definition a "structure", yet it is settled law that stationing a caravan on land – even for prolonged periods - is a use of the land rather than operational development. This principle is

embedded in the legislative framework, endorsed by the case-law and routinely applied by the Inspectorate.

3.15 This is not to say that a caravan can never become operational development. However, the decision in **Measor** is clear authority for the fact that most caravans will not.

3.16 A caravan does not therefore fall within the first element (operational) of the definition of development as provided by s55 of the T&CP 1990 Act and therefore falls within the second element of the definition being a use of the land, namely "'the making of any material change in the use of any building or other land".

Town & Country Planning (General Permitted Development) Order 1995

3.17 Part 5 of Schedule 2 states that the use of land as a caravan site in certain circumstances can be permitted development. What this is aimed at is where planning permission might normally be required but Part 5 makes permitted development. The exemptions in Part 5 are linked to paragraph 1 of schedule 1 to the 1960 Act wherein is found *"use within the curtilage of a dwelling house"* but this is not specified as an exemption because such use is held to be incidental to the primary use and does not require planning permission. Part 5 therefore sets the planning context as to how the stationing of a mobile home within the curtilage of a dwelling should be regarded.

3.18 The author of this statement is aware of the case law *Rambridge v SOS and East Hertfordshire DC [1997]* as well as other cases. These all concerned the construction of a building for use as living accommodation and whether or not they would be permitted development for the purposes of Class E of Part 1 of Schedule 2 of the GPDO. The important point to bear in mind is that Class E of Part 1 of Schedule 2 of the GPDO is not at issue in this application for a certificate of lawful development. The GPDO provisions would only apply if any mobile home lost its mobility through operational development and is thus regarded as a building. The distinction therefore remains that Class E relates to building operations and not the use of land.

Will operational development be undertaken?

3.19 The proposed unit would meet the tests to be applied under planning law and there will be no operational development because:

Size

3.20 The proposed unit would conform to the dimensions set out by the 1968 Act and be lawfully transportable when assembled.

Physical attachment

3.21 It is proposed to bring the mobile home to the site by lorry and to station it directly onto padstones with no fixing thereto. Case law

confirms that this arrangement renders it a mobile home. This strongly points to acceptance on the Council's part that the proposed structure is not a building since if it were then Building Regulations would be applied. The connection to the services serving the dwelling will be de-minimis.

Construction and mobility

3.22 The manufacturers confirm the 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 and meets the mobility test.

3.23 It is usual for most mobile homes to be delivered as a complete unit or as two halves that are then joined together on site. However, there have been planning cases where the issue of the definition of Section 13(1) (a) of the 1968 Act has been the subject of consideration by the Courts. In Byrne v Sec of State for the Environment and Arun DC in 1997 it was held to be necessary that, in the case of larger mobile homes, the act of joining the two sections together should be the final act of assembly. However, there was no requirement within the ruling for the process of creating the two sections to take place away from the site on which they were joined. All that was required was that the act of joining the two sections together was the final act of assembly.

3.24 In other words, a mobile home can be delivered to a site in many pieces but it will then need to be assembled 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 and the correct application of planning law will be to regard the development as being the use of land not building operations. But if it does involve operational development it would fall outside the definition. This means that a mobile home is not caught up in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 and the subsequent amendment Oder No 2 of 2008. The 1960 Act expressly omits from licence control the use as a caravan site incidental to the enjoyment as such of a dwelling house within the curtilage of which the site is situated.

Permanence

3.25 There are tests established by the Courts for whether a structure placed on land has a sufficient degree of permanency to be judged *"operational"* development in terms of sec.55 of the 1990 Act. These tests have become overlain with importations from caravan related legislation. However, if it can be shown that a mobile home having the conventional characteristics of mobility has been brought on to the site or subsequently adapted by the addition of foundations, brick skirts on other permanent additions then this can be used to claim that the mobile home has lost its mobility. In *Byrne v Sec of State for the Environment and Arun DC [1997]* the issue of

mobility was reviewed in relation to a terrace and porch canopy that had been bolted onto the mobile home and decking attached to the chassis. It was held that these were not an integral part of the structure and could be quickly and easily removed. This should be contrasted with adding fixed skirts and full strip foundations.

3.26 It is likely the unit at 12 Uttoxter Road will be in situ for as long as is necessary to meet the needs of the family occupying the main dwelling. This is true for most mobile homes used ancillary to main dwellings. This does not mean that the unit will remain there permanently. 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 the circumstances it is submitted that no operational development is being undertaken. This view is supported by the Inspector in the East Hertfordshire appeal. (Appendix A).

Mobile homes in residential gardens

3.27 The use of a caravan or mobile home in a residential curtilage for *"purposes incidental to the enjoyment of the dwelling house as such"* falls within the primary use of the dwelling, and is excluded from the definition of development. A caravan or structure that meets the definition thereof is not operational development because of its mobility and for the purposes of Section 55, planning law has the status of a chattel and it is thus a use of the land on which it is stationed.

3.28 The application is for the use of the land to station a caravan that meets the tests set out in the 1960 & 1968 Acts and it is not therefore a building. The proposal cannot therefore be assessed against the provisions of Class E of the General Permitted Development Order. The use of land, within the curtilage of a dwelling, to station a caravan does not require a site licence (as specified at paragraphs 1 and 2 of Schedule 1 of the 1960 Act) and such use is held to be incidental to the primary use and is not development. The use of land applied for falls squarely within Part 5 of the GPDO.

3.29 The term *"incidental"* is not defined in planning law. But in *Whitehead v S.O.S. & Mole Valley D.C. [1991]* it was ruled that semi-independent housekeeper's accommodation in a barn within a dwelling's curtilage could be incidental to its enjoyment and thus permission was not required. The same conclusion was reached by the Inspector in the recent case in Elmbridge Borough. (see Appendix D). 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 principal in planning case law that additional living accommodation, whether by conversion or a mobile home can be incidental to a principal dwelling even if capable of semi-independent occupation. So permission is not required for the mobile home in such circumstances.

3.30 *Uttlesford D.C. v SSE and White [1992]* also established that it is not necessary for a relative of the occupier of the main dwelling to rely upon facilities in the main dwelling house in order to maintain additional living accommodation in the same planning unit.

3.31 The circumstances in this case are quite clear that the planning unit is the dwelling and curtilage at 12 Uttoxeter Road and this will remain the case with the stationing of a mobile home in the garden. Only one dwelling will result albeit accompanied by a mobile home used incidental to the dwelling unit. The fact that the mobile home will have all the usual facilities for residential occupation by the family's dependant parents does not change the essential fact that it will be incidental to the house.

3.32 Attached at Appendix A to this Statement is an appeal decision regarding the self-same form of development as is proposed in this CLU application. That case in East Hertfordshire had been refused a certificate but the appeal Inspector firmly rejected all the planning authority's arguments in support of its decision.

3.33 Attached at Appendix E to this Statement is an appeal decision (reversing the decision to refuse the application by Elmbridge Borough Council) regarding the provision of a mobile home within the curtilage of a dwelling house to provide ancillary staff accommodation. In each appeal case, at East Hertfordshire and at Elmbridge, the Inspectors concluded that the mobile homes do not constitute operational development and nor would they involve a material change of use requiring planning permission. The Inspectors conclusions in both cases hold good for this current proposal.

Other issues

3.34 The following extracts from the Development Control Practice manual is relevant to the consideration of this certificate application.

Question. I am dealing with an enforcement investigation into whether a new timber lodge 10m from the rear of a rural house requires planning permission. The accommodation is occupied by the owner's parents who were previously housed in a caravan in the front garden, when the facilities of the house were used on a day-to-day basis. This was deemed to be 'incidental to the enjoyment of the dwelling house'. The present lodge can be transported in two pieces and therefore complies with the definition in the Caravan Sites Act 1968. However, it is arguable whether the lodge is, in fact, within the residential curtilage of the main house. Additionally the lodge is separated from the house by a picket fence, it has its own council

tax banding and, so far as I am aware, water and electricity supply are separately metered. There is only one access to the site and both buildings share it. Can you comment on whether the lodge is an independent unit which could be successfully enforced against?

Answer. Enforcement cases of this kind raise a complexity of issues. The first of these is the need to establish whether the structure that has been placed on the land is a building operation or not. The mere fact that a structure is termed a caravan using the criteria cited in the 1968 Act, may not necessarily mean that it is not a building operation for the purposes of the Town and Country Planning Act 1990. In the case of the 'lodge' type of accommodation you mention it may well be that its supports and service connections give it sufficient characteristics of permanency for permission to be required. For instance, in a 2007 appeal case from the West Midlands an Inspector found that rear garden parent's accommodation was a 'mobile home installed as a structure', where specially constructed supports or foundations had been constructed and plumbing and sewerage systems installed.

The main matter to be resolved is, of course, whether a separate residence has been established on the land resulting in the creation of a new planning unit requiring planning permission. In the case you describe many of the indicators that the accommodation is separate, and does not rely on the main house, seem to be in place. Its curtilage has been defined and service connections are separate, even though access is shared. Such a 'lodge' building is certain to provide all the necessary domestic facilities enabling it used independently. The lifestyle question, namely how the accommodation is actually used, is also part of the matrix of considerations that may arise in evidence. For example, in the appeal case already cited, the inspector noted that the parents concerned always slept in the accommodation, used the bathroom and toilet, rested in the unit in the afternoons, and took some meals there. This led him to believe that a separate dwelling not ancillary to the main house had been created.

The final consideration concerns the input of the Town and Country Planning (General Permitted Development) Order 1995. If the lodge is deemed to be a building, and provided it is within the curtilage of the dwelling house, as an 'incidental' garden structure it is likely to fall within Part 1 Class E as permitted development. However, according to the government's controversial interpretation of the Order this does not apply if the building is immediately used for primary living accommodation.

In summary, in order for your council's potential enforcement to be successful and survive the likely appeal, it does need to assess very carefully whether it has sufficient hard evidence to justify an allegation of an unauthorized building and/or a material change of use.

Comments: The development described above is not the same as the use of land described in this current application. The points in red type above are clearly different material planning considerations.

3.35 Further light is thrown on this issue in another extract from the Development Control Practice Manual as follows:

Question. A 13m mobile home on wheels has been stationed in a garden more than 5m from the house. It includes a living room, bedroom, bathroom and kitchen and is connected to mains power and drains. The unit is occupied by the householder's mother. It is claimed that it is used as ancillary accommodation with the mother spending the day in the house. My authority considers the mobile home a self-contained unit of accommodation that requires permission. The householder disagrees, citing Whitehead v Secretary of State and Mole Valley District Council [1991]. What is your advice?

Answer. The mobile home appears to be a caravan that has not involved operational development. The use of a caravan in a residential curtilage for "purposes incidental to the enjoyment of the dwelling house as such" falls within the primary use of the dwelling, so it is excluded from the definition of development. The term "incidental" is not defined in planning law. But Whitehead intimated that semi-independent housekeeper's accommodation in a barn within a dwelling's curtilage could be incidental to its enjoyment and thus permission was not required. 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 caravan that is determinative rather than its potential to be occupied as a self-contained residential unit. So permission may not be required for the mobile home.

Comments: The key comparisons with the current application are in red type. It is submitted that the answer to the question posed is the same that should be reached in this application for a certificate of lawfulness.

4.0 CONCLUSION

4.1 The proposed timber unit falls within the definitions stated in the 1960 and 1968 Acts and by any reasonable interpretation is a mobile home. The stationing of such a structure within the curtilage of a dwelling is not operational development 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 mobile home is a therefore a chattel to be used for purposes incidental to the enjoyment of the dwelling house as such. Incidental use is not the same as ancillary use so far as Planning legislation and case law is concerned. In particular, case law *(Whitehead v Secretary of State/Mole Valley District Council)* has ruled that semi-independent accommodation is incidental to a principal dwelling and this has been reaffirmed in other cases (e.g. Uttlesford v Secretary of State/White).

4.2 It is thus an established principal in planning case law that additional living accommodation, whether by erection of a building or a mobile home, can be incidental to a principle dwelling even if it is capable of semi-independent occupation. The test as to whether a completely separate self-contained dwelling unit is being provided from the principal dwelling is therefore one of functional relationship between the mobile home/granny annexe and the main dwelling, i.e. how it is used, and the size of the accommodation and how it is fitted out is irrelevant to the consideration of the application for a Certificate of Lawfulness. The test is met in this Certificate of proposed lawful use application because there would be a strong functional relationship between the main dwelling and mobile home/granny annexe which would form a part of and be used interchangeably with the accommodation provided by the main dwelling and the outside amenity space in support of the day to day living needs of the occupying family's elderly parents as detailed in Section 1 above.

4.3 The approach to be adopted in considering and determining this application is encapsulated in the very recent appeal decision at Appendix A. In that and this case the development is exactly the same; the mobile home would be provided by the same company. As a matter of both commonsense and planning law the material considerations are exactly the same.

4.4 For the reasons explained above it is submitted that the correct application of planning law in this case should result in the granting of a Certificate of Lawfulness for a Proposed Use of land.