

DELEGATED DECISION REPORT

SMD/2017/0278
Valid 12/05/2017

CROSS ROADS COTTAGE
OVER THE HILL
BIDDULPH MOOR

CERTIFICATE OF
LAWFULNESS FOR AN
EXISTING USE FOR THE
SITING OF A CARAVAN FOR
ANCILLARY RESIDENTIAL
USE

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

The application is for a Certificate of Lawful Use relating to the proposed use of a two part, park home style, static caravan that was delivered to site in April 2017, as living accommodation by the elderly parents of the home owner at Cross Roads Cottage. The certificate can only be granted in the circumstances where the proposed use (on the date of the application) would have a lawful status that would be immune from enforcement action. A proposed use can be lawful because the change to that use does not require planning permission. The application is to be decided on the basis of a legal determination with only consideration of evidence relating to that factor. The report will set out the following considerations:

- Is the park home structure a caravan as defined by the Caravans Act 1960 or is it a building that would result from an act of operational development?
- Is the use to take place within the planning unit of the dwelling house?
- The extent of the functional relationship. Setting the effect of the intervening use aside, could the use of the caravan relied on an ancillary status?

DESCRIPTION OF SITE

The application site comprises Cross Roads Cottage, and its garden grounds, as outlined in red on the submitted location plan.

APPLICATION

The proposal is to provide a residential caravan within the grounds of Cross Roads Cottage, to accommodate Mrs Ball's elderly parents. As Mrs Ball's parents get older, they will require a greater degree of day-to-day assistance and rather than potentially moving to a care home, their daughter and son-in law can become their primary carers, enabling them to retain a degree of independence for as long as is possible. As well as providing care when necessary, they will also facilitate taking them out, to go shopping etc. The water supply, electrical supply and waste water systems would

all be shared with the main building. The caravan will not have its own utility metres or postal address and all bills will be sent to Cross Roads Cottage. The provision of meals, laundry facilities, housekeeping, vehicle parking etc. will all be shared.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

Stone cottage and outbuilding tight curtilage walls surrounded by 0.6 acres of grazing paddock pre dates 1877 (historic maps indicate)

SM.9680 App for outline permission - demolition of existing cottage buildings and erection of new dwelling. Approved 11th May 1981 (red edge surrounds all 0.6 acres).

SM.12013 App for outline permission for 2nd Dwelling. Refused June 1983.

SM.13096 Rebuilding and Extensions. Withdrawn.

SM.13970 Rebuilding and Extensions. Approved 16th July 1985 (red edge surrounds all 0.6 acres. Straight drive immediately next to dwelling).

SM.14484 Rebuilding/replacement of Cottage. Approved 12th December 1985 (red edge surrounds all 0.6 acres. Appears to include detached garage and different drive arrangement).

SM.607-86 Erection of Detached Double Garage. Approved 16th October 1986 (appears to re site garage further from trees behind) .

2nd November 1995 Applicant's purchase of property (land registry)

02/00014/BOC Enforcement complaint storage of cars.

02/00015/BOC Enforcement complaint construction of second access drive.

02/00016/BOC Enforcement complaint storage of cars.

SME/2016/00099 – Enforcement complaint storage of freight containers and cabs (temporary use took place from October 2016 until at least February 2017)

SMD/2017/00278 – Application for certificate of lawfulness relating to proposed use of caravan – current application.

CONSULTATIONS

Publicity – Near neighbours notified in writing

3 letters of objection have been received.

Concerned about land being used to store HGVs and that the caravan is unsightly and not in keeping with the rural area or the Green Belt.

Town / Parish Comments

Biddulph Town Council - *Refuse, concerned it will not be in keeping with rural environment.*

OFFICER COMMENTS

Was the introduction of the park home static structure operational development or was it a caravan and therefore a use of land?

The caravan that has been sited on the land and would be used for the proposed use complies in every respect with the statutory definition contained within the 1960 Sites Caravans and Control of Development Act (as amended by the 1968 Caravans Act etc.)

- It will be designed for human habitation;
- It will be capable of being moved from one place to another; and
- Its maximum dimensions will not exceed:
 - 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).

It is accepted that the accommodation would be provided within a caravan and not within any building or operation – the proposal therefore relates only to a use of land.

Introduction and summary of legal background

The applicant contends that the use of the caravan is lawful because it takes place within the same planning unit as the dwelling house and is ancillary to that primary use.

The concept of the 'ancillary use' is a recognition that a single primary use normally comprises a variety of different uses which if they existed on their own might be classified differently but because they are associated with and functionally linked to a primary use they do not result in material change. It is well established in planning law, therefore, that if a caravan is used within the same planning unit for purposes that are ancillary to the primary use and that it does not result in a physically and functionally separate planning unit- a material change of use will not occur. The applicant has submitted a number of appeal decisions that advocate and rehearse that approach.

The doctrine of the planning unit is a tool for determining the precise area of land against which to assess the materiality of change. It follows that to be an ancillary use the caravan must be used in the same planning unit as that of the primary use, i.e. that of the dwelling house. The planning unit will be the unit of one ownership and occupation, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

The history of land use and is the caravan now placed within the dwelling's planning unit?

The original Cross Roads Cottage would have been a small stone dwelling with an outbuilding that predated 1877. The historic O.S. plan suggests that the dwelling would have had a tight curtilage boundary surrounded by 0.6 acres of grazing paddock. However, when planning permission was granted for the replacement dwelling in Dec 1985 (SM. 1448) the approved plan with the land edged red included the whole of the 0.6 acres of land that is currently registered as one title. The red edge indicates the extent of the residential planning permission i.e. the area of land that could be occupied and used for residential purposes in association with the new dwelling, and therefore the dwelling's planning unit. The Land edged red forms a rectangular parcel of land some 85 metres long end to end running parallel to the road, and 28 metres wide.

The dwelling is located at the very southern end of the land and in October 1986 planning permission was granted to construct a detached garage to the side of the dwelling with a new access, driveway and turning head. The edge of the driveway some 30 metres from the land's southern boundary marks what might conventionally be identified as the extent of the dwelling's curtilage. The remainder of the land to the north beyond provides relatively extensive garden. The caravan in question has been placed deliberately on a recently constructed hardstanding in the northern part of the land.

Could the use of the caravan have relied on ancillary status?

The caravan is a large park home it provides all of the facilities required for full self contained independent residential use. However, the question rests not with the extent to which it is capable of independent use but the way in which the caravan is actually used. So therefore, if a caravan provides some kitchen facilities but the occupants actually use the kitchen in the main house the use may still be ancillary. To be ancillary the use must take place within the same planning unit as that of the primary use and there must be a functional relationship.

In this case the caravan would be occupied by the applicant's mother and father. The key issue is whether the use of the caravan will be ancillary to the primary residential use of the dwelling. The JPL commentary that was published following the judgement in Uttlesford confirms that the use (in the stated case) of a converted garage, with all of the facilities needed for a single dwelling use, and its occupation by someone with no connection to the main house, would certainly have been a material change of use. However, Lionel Read QC confirmed (of course) that any judgement would be a matter of 'fact and degree', and that the existence of the facilities to live independently could not settle the matter. Neither would the fact of a blood relationship be determinative. Inspectors (and thus also LPAs) must therefore go into the question of how often the person(s) in the annex (or in this case the caravan) cross over and socialise with the family or household in the main house.

The following supports a view that there will (once the caravan is occupied) be no material change of use of land:

- 1/. There will be no separate postal address for the caravan;
- 2/. The electrical services are provided under the house address utility bill;
- 3/. Water will be supplied from the water supply of the house, again under that billing name and address;
- 4/. Waste water will be carried away by the house waste water drainage system;
- 5/. No separate telephone account will be in force at the property, or any other separate TV cable service or internet provider service account for the caravan. Any TV points in the caravan will merely be an extension of the house provider service;
- 6/. Laundry will not be done separate. All of the family's washing is catered for in the house utility area, for all of the family members;
- 7/. In essence, the caravan will thus be used as nothing more than detached bedroom accommodation.

The caravan would provide living accommodation for Mrs Ball's parents, who are elderly and have health problems. These are outlined in statements submitted in support of the application. As time goes on it is anticipated that the parents will require a greater degree of day-to-day assistance. The applicant's expect to become their primary carers, with the proposed arrangement allowing her parents to retain a degree of independence. However, it is emphasised that there is no intention that the caravan will be made available for separate independent residential use. Hot and cold water, and the electricity supply, would be from the main house, with no separate utility meters. The caravan will not have its own highway access or postal address, nor will it be registered as a separate unit of accommodation for Council Tax purposes. It is anticipated that the provision of meals, laundry facilities and housekeeping will be shared. Nor will there be any physical or functional separation of the land on which the caravan is proposed to be sited from the rest of the garden land.

CONCLUSION / PLANNING BALANCE

The use of the Caravan on the land would be lawful because it would not introduce a material change of use and an act of development, because it would take place within the planning unit of the dwelling house and be functionally ancillary to that primary use.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst

Recommendation Date: 25/08/2017

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council