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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 BROOKFIELDS. The property is owned and occupied by Mrs KE Corbishley, who is the mother of the applicant Mrs JL Milward and the Mother-in-law of applicant Mr A Milward. The mobile home would be incidental accommodation for the applicants and their young son in conjunction with Mrs Corbishley's occupation of the main dwelling, on the basis of the applicants providing practical support and companionship in her later years as well as providing suitable incidental accommodation to meet the needs of the applicants' son.
- 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. Mr and Mrs Milward and their son would occupy the mobile home as their living accommodation. This would allow the applicants to be close at hand to offer Mrs Corbishley immediate access to any support and assistance required by her, whilst each maintaining their independence. Mr and Mrs Milward would share the residential occupation and enjoyment of the principal dwelling and spend time with Mrs Corbishley in the main house each day including for some main meals and socialising. Likewise, Mrs Corbishley would spend time socialising in the mobile home which would greatly benefit her overall wellbeing.
- 1.3 Other facilities would also be provided by the main dwelling including laundry, storage of domestic items, housekeeping etc. The applicants would also share the outside amenity space with 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 similar circumstances are included at Appendices A to E.
- 1.5 The property at BROOKFIELDS, ANCHOR LANE, is a detached dwelling with private outside amenity space to the front, side 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 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 BROOKFIELDS
- Mrs Corbishley would retain her close family links with her daughter and son-in-law who she will rely on for support for her day to day living needs
- The mobile home would provide suitable and accessible accommodation to meet the needs of the applicants' son
- The property would provide an enriching and safe environment to meet the needs of the applicants' son
- The occupiers would retain their close family links with their daughter and son-in-law and who 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 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 GROUND ON WHICH A CERTIFICATE IS SOUGHT

3.1 Section 192 of The Town and Country 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 apply for a Certificate of Lawfulness for a proposed 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 the 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 and Country Planning Act 1990 and comprises two elements:

a) Operational Development being “the carrying out of a 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 building 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 transported on a motor vehicle or trailer)”

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.

3.5 This definition has been modified by Section 13 (1) of the Caravan Sites Act (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 being towed, or 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 be lawfully 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 on 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 towbar); 20 metres
- b) Width: 6.8 metres.
- c) Overall height of living accommodation (measure 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 not 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 (which the proposal is)
- 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 the building, engineering, mining or other operations in, over or under land”
- 3.10 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 paragraphs 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 it is therefore considered to be a chattel placed on the land.

The use of land

- 3.11 Case Law reflects 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”
- 3.12 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.

- 3.13 This is not to say that a caravan can never be operational development. However, there is clear authority for the fact that most caravans will not.
- 3.14 A caravan does not therefore fall within the first element (operational) of the definition of development as provided by S.55 of the T&CP 1990 Act and therefore falls within the second element of the definition being a use of the land, namely "making of any material change in the use of any building or other land"

Town & Country Planning (General Permitted Development) Order 1995

- 3.15 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 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 with the curtilage of a dwelling should be regarded.
- 3.16 The important point to bear in mind is that Class E of Part 1 of Schedule 2 of the GPDO is not an issue in this application for 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 related to building operations and not use of the land.

Will operational development be undertaken?

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

Size

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

Physical attachment

- 3.19 It is proposed to bring the mobile home to the site by lorry and to station it directly onto, but not attached to, a suitably prepared base. 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

- 3.20 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 a crane and meets the mobility test.
- 3.21 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 two 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 necessary that, in the case of larger mobile homes, the act of joining the two sections together should be the final part of assembly. However, there was no requirement within the ruling for the process of creating the two sections to take place on site on which they were joined. All that was required was that the act of joining two sections together was the final act of assembly.
- 3.22 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 the 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 Order No 2 of 2008. The 1960 Act expressly omits from license control the use of a caravan site incidental to the enjoyment as such of a dwelling house within the curtilage of which the site is situate.

Permanence

- 3.23 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 S.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 onto 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.

However, Appeal Decision APP/J1915/X/11/2159970 confirms that 'attachment to services is not the same as physical attachment to the land, as they can easily be disconnected'.

- 3.24 It is likely the unit at BROOKFIELDS will be in situ for as long as is necessary to meet the needs of the family occupying it. This is true for most mobile homes used as ancillary accommodation to main dwellings. This does not mean that the unit will remain there permanently. When no longer needed it can easily be disconnected from utilities and removed from site. In the circumstances it is submitted that no operational development is being undertaken.

Mobile homes in residential gardens

- 3.25 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 chattel and is thus a use of the land on which it is stationed.
- 3.26 The application is for the use of 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.
- 3.27 It is 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.
- 3.28 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.

- 3.29 The circumstances in this case are quite clear that the planning unit is the dwelling and curtilage at BROOKFIELDS, 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, which will have all the facilities of residential occupation by that this does not change the essential fact that it will be incidental to the house.

4.0 CONCLUSION

- 4.1 The proposed timber unit falls within the definitions stated in the 1960 & 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 not longer needed by the family occupying the main dwelling. The mobile home is 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 principle in planning case law that additional living accommodation, whether by erection of a building or a mobile home, can be incidental to a principal 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/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 the mobile home 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.
- 4.3 For the reasons explained above it is asserted 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.

5.0 Appendices

'A' – Appeal Decision Ref: APP/Z3825/X/16/3151264 dated 28/10/2016.

'B' – Certificate of Lawfulness Ref: SMD/2017/0330 DATED 26/07/2017.

'C' – Certificate of Lawfulness Ref: SMD/2017/0278 dated 25/08/2017.

'D' – Certificate of lawfulness Ref: 14/4817M dated 10/12/2014.

'E' – Certificate of Lawfulness Ref: SMD/2015/0381 dated 29/01/2016.

'F' – Certificate of Legal Conformity from KEOPS.



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