

Development Management Delegated Decision Report

B/23/0118



SUMMARY OF APPLICATION			
Application Reference	B/23/0118		
Application Type	Certificate of Lawfulness (proposed use)		
Proposal	Application for a Lawful Development Certificate to confirm if the proposed siting of a caravan to be used ancillary to the host dwelling would be lawful		
Location	29, West End Road, Wyberton, Boston PE21 7LR		
Applicant	Jill and James Laplain		
Agent	Mr Michael Hyde, MH Planning Associates		
Received Date:	28-Mar-2023	Consultation / Publicity Expiry Date:	29-Apr-2023
Valid Date:	28-Mar-2023	Statutory Expiry Date:	23-May-2023
Date of Site Visit:	10-May-2023	Extension of Time Date:	N/A
Objections received?	Yes.		
5 day notification record:			
Councillors notified	Date	Response received – date	Ok to continue
Cllr. R. Austin	16-May-2023	16-MAY-2023	Yes
Cllr. C. Mountain	16-May-2023	21-MAY-2023	Yes
Recommendation	A Lawful Development Certificate is issued.		
Report by:	Megan Epton		
Date:	22-MAY-2023		

OFFICER REPORT

SITE AND SURROUNDINGS:

The site is located on 29 West End Road, Wyberton and comprises of 1no. detached two storey dwelling with a sizeable frontage and large private rear garden. It is directly adjacent to 2no. residential neighbours.

DETAILS OF PROPOSAL:



The proposal is for a Certificate of Lawfulness for the proposed siting of a 'garden lodge' (caravan unit) within the rear garden of 29, West End Road. The unit would have maximum external measurements of 11.73m by 6.53m with a maximum internal floor to ceiling height of 3.05m.

RELEVANT HISTORY:

No recent relevant history.

RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:

South East Lincolnshire Local Plan (2019)

Town and Country Planning Act 1990

Section 192 of the Town and Country Planning Act 1990 states that:

*"If any person wishes to ascertain whether—
(a) any proposed use of buildings or other land; or
(b) any operations proposed to be carried out in, on, over or under land,*

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

If, on an application under this section, the local 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 shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance (PPG)

Paragraph: 009 Reference ID: 17c-009-20140306 of the Planning Practice Guidance indicates:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

The Caravan Sites Act 1968

CONSULTATION RESPONSES:

Lincolnshire County Council were consulted and held no objections.

Wyberton Parish Council were consulted and raised objections to the proposals, questioning the ultimate need for a caravan within this location. However, this is not a material consideration for this kind of application.

THIRD PARTY REPRESENTATIONS RECEIVED:

A neighbour has written in to object to the proposals on the basis that the proposal description for the siting of a caravan is false - suggesting that the unit proposed cannot be classed as a caravan and questioning the need for a caravan. This neighbour also raised concerns relating to the fixing of the unit to the site in terms of utility connections. The basis of these points are assessed in the following evaluation.

EVALUATION:

An application for a Lawful Development Certificate is not a planning application in the normal sense, in that the planning merits and assessment against the Development Plan are not relevant. Essentially, the question to be asked is whether the proposed development is lawful without needing any further planning permission. A development is 'lawful' if no enforcement action may be taken by the authority. The matters to be determined are solely issues of evidence and law.

In the assessment of the current proposals and their lawfulness, it is important to address three key points- whether the proposals constitute "operational" development; whether the proposed unit falls within the legal definition of a caravan, and whether the proposed use is consistent with the lawful use of the land.

Operational Development

Development is defined in Section 55 of the Town and Country Planning Act 1990 as the "carrying out of building, engineering, mining or other operation's in, on, over or under land; or the making of any material change in the use of any buildings or other land". With "building operations" being defined as operations including: "demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder."

The application states that there is no intention to physically attach the unit to the land, with connections to utilities not considered as 'attachment' due to the minor works required to detach from such services. It is also confirmed that no building works or material changes of use of the land are proposed as part of the application.

Section 55 of the act also states that in cases of "the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such", it is not considered that proposals would be considered 'development'. In respect of the proposed siting of a caravan unit, it is therefore considered, that, subject to the proposed unit falling under the legal definition of the caravan and its proposed use being consistent with the lawful use of the plot, the proposals would not constitute "operational" development.

Legal Definition of a Caravan

The definition of a caravan is set out in Section 29 of the Caravan Sites and Control of Development Act 1960 as: “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 other 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”. The definition is further extended in Section 13 of the Caravans Sites Act 1968 to include twin unit caravans, which must be composed of not more than two sections, constructed or designed to be assembled on site by means of bolts, clamps or other devices, and should not exceed 60 feet in length, 20 feet in width and 10 feet in height overall (size later changed see below).

The size limits were updated by The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006. They arose due to changes necessary to accommodate upgrades, normally cladding, in the thermal efficiency of some mobile homes. The maximum permitted measurements are as follows:

- Length (exclusive of any drawbar): 20 metres (65.616 feet);
- Width: 6.8 metres (23.309 feet);
- Height measured internally from the floor at the lowest level to the ceiling at the highest level: 3.05 metres (10.006 feet).

The application states that the proposed twin unit mobile home would measure 11.73 metres (38.48 feet) in length by 6.53 metres (21.42 feet) in width, and the overall height of the living accommodation, measured internally from the floor at the lowest level to the ceiling at the highest level, would not exceed 3.05 metres (10.006 feet). These dimensions do not exceed the measurements contained within the definition of a caravan.

It is also noted that the proposed unit will be composed of two sections, separately constructed, which will be joined together on the application site as the ‘final act of assembly’. With regards to the mobility of the proposed unit, it has been confirmed in the documents of the application that the proposed caravan would not be physically attached to the land, resting under its own weight on ‘ground screws’ or similar, with a void beneath to enable the unit to be lifted and moved if required. The application is accompanied by a lifting diagram which demonstrates this.

Based on the information submitted (and explained above) it is considered that as the unit’s dimensions fall within the size limitations and that the unit is capable of being moved from one place to another, the proposed unit falls within the legal definition of a Caravan.

The Proposed Use

The site comprises of one residential dwelling and associated garden within a single planning unit. There are no planning restrictions on the occupation of this dwelling and no previous enforcement action to note, therefore the lawful use of the site is considered to be ‘residential’.

The main house is currently occupied by the applicants, however in time the dwelling will instead be occupied by relatives, with the applicant using the proposed unit as living accommodation.

It is stated and shown in the application that:

1. There is no intention that the caravan will be made available for separate, independent, residential use;
2. The unit will not be physically separated from the rest of the garden of the main dwelling;
3. The water and electrical supply will both be shared with the main property;
4. The provision of meals etc. will be shared with the main property;
5. The caravan will not be registered as a separate unit of occupation with respect to the payment of Council Tax.

It is considered that, as “the property will remain in one ownership and control and the single main use will remain as a one residential dwelling house”, it is clear that the proposals would be to provide additional accommodation for use by one family-constituting a use that is incidental to the enjoyment of the host dwelling house. Due to this, the property as a whole would remain as a single planning unit, with the single use being that of a residential dwelling.

It is not considered that the siting of the proposed caravan unit would constitute a change of use for planning purposes, and therefore it is deemed acceptable.

CONCLUSION:

The application seeks to determine whether the proposed siting of a ‘garden lodge’ (caravan unit) within the garden of ‘29, West End Road’ for use as additional accommodation, is lawful and would not require planning permission. Based on the information provided on 28-Mar-2023, it is concluded that:

- The proposed unit would be sited in a manner that would not result in ‘permanent attachment’ or a ‘permanent building’;
- The proposed unit conforms to the size, constructional and mobility criteria set out within the legal definition of a caravan;
- The lawful use of the site is that of a residential one, and the proposed mobile unit would be incidental to this use.

Therefore, the Council is satisfied that the proposals would not constitute development under the provisions of Section 55 of the Town and Country Planning Act 1990 and planning permission is not required.

RECOMMENDATION:

It is recommended that a Lawful Development Certificate is issued.

INFORMATIVES / NOTES TO BE INCLUDED ON/WITH DECISION NOTICE
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STATEMENT OF PROACTIVE WORKING:

In determining this application, the authority has taken account of the guidance in paragraph 38 of the National Planning Policy Framework 2021 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.