PLANNING STATEMENT

Prepared by

Angela Simmonds, Planning Consultant and Solicitor non-Practising.

Mercury House
Unit 7
Willoughton Drive
Foxby Lane
Gainsborough
DN21 1DY

SIMMONDS PLANNING LTD

APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF PROPOSED USE SECTION 192 TOWN AND COUNTRY PLANNING ACT 1990

Barfords Farm, Swineshead Road, Kirton Holme, Boston, PE20 1SQ

October 2021

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1. INTRODUCTION

1.1 This Planning Statement has been prepared and submitted by Simmonds Planning Ltd on behalf of Mr James Proctor ('the applicant') This application is for a Certificate of Lawfulness of a proposed use under section 192 of the Town and Country Planning Act 1990 (as amended) (the "Act") to site a mobile home/lodge within the curtilage of the dwellinghouse known as Barfords Farm, Swineshead Road, Kirton Holme, Boston, PE20 1SQ, for purposes incidental to the enjoyment of the dwellinghouse.

1.2 This statement sets out the circumstances of the case before the Council for consideration and provides evidence to support the purely ancillary nature of the caravan and a summary of the current legal commentary which supports the case. The submission shall demonstrate that the caravan, which is used purely as over-flow accommodation for the family, does not require planning permission as at is located within the planning unit/curtilage. The result of this would be no material change in the use of the planning unit, and thus no development as defined by Section 55(1) of the 1990 Act. A Certificate of Lawfulness of Proposed Use or Development, under the provisions of Section 192 of the 1990 Act, should therefore be granted.

2. SITE DESCRIPTION AND PHYSICAL CONTEXT

2.1 The site subject to this application is known as Barfords Farm, Swineshead Road, Kirton Holme, Boston, PE20 1SQ. The site comprises the dwelling and garden area and the unit is proposed to be located within the garden area of the main house which is well within the domestic curtilage of the dwelling.

2.2 The site does not form part of any green wedge and does not form part of landscape designation. The site is not within the setting of a listed building or a Conservation Area.

2.3 The site plan submitted with this application shows the ownership of the dwelling within the red edge and the rear garden area within which the caravan unit would be located. This is within the domestic curtilage of the dwelling.

3. PLANNING HISTORY

3.1 Non- relevant to this application

4. THE PROPOSAL

4.1 This application proposes a twin mobile home/lodge on land within the garden of the application property. The lodge would be occupied in conjunction with the family occupying the main dwelling on the basis of providing incidental accommodation. The mobile home would purely be incidental to the main dwelling and used for the same purpose as an integral residential annexe, had there been one. The section of the garden where the lodge is proposed to be located benefits from extensive natural screening and any public views are very limited.

4.2 The applicant requires the unit for himself and his partner and the unit will be located within the curtilage of his parents dwelling. The applicants and his partner have both moved to the area with to be with James's parents. The applicants finds themselves in the position where due to the current financial market and the effects of the pandemic, they are not in the position to successfully attain a mortgage for their first home. They feel that renting a dwelling will be a negative drain on our finances and will jeopardise any hope they have to save a deposit for a house. On this basis James's parents have invited them to stay with them and the lodge will provide purely ancillary accommodation to the main dwelling.

4.3 The mobile home would have bedrooms and a separate bathroom. Whilst the mobile home would have its own kitchen, a number of main meals would still be prepared by the applicant in the main dwelling for the benefit of the extended family members. It is very much still proposed to be an extended family arrangement and not a separate unit of accommodation and case law has accepted that a kitchen and bathroom facilities within an ancillary unit is acceptable. If required this case law can be provided, but this is a widely accepted element of ancillary accommodation.

STATUTE AND CASE LAW

5.1 Section 192(1) states "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 describing the use or operations question."

5.2 Section 55(2) of the Town and Country Planning Act 1990 Act lists operations and uses of land that, for the purposes of the 1990 Act, shall not be taken to involve development of the land. This includes at S55(2)(d) 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.

5.3 The siting of a caravan/mobile home on land is a "use of land" rather than operational development and therefore this application seeks confirmation that the proposal complies with S55(2)(d) of the Act and does not involve "development of land". As it is not "development" it can be carried out without planning permission.

5.4 For the purposes of the 1990 Act, uses and operations are 'lawful' at any time if:

(a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5.5 Lawful Development Certificates are legal determinations based solely on evidential fact, with the onus of proof on the applicant. Local Plan Policies and National Policy and guidance are not relevant to the determination of an application submitted under the provisions of Section 192 of the Act. Any concerns regarding potential impact on the character or appearance of the area or neighbouring amenity, are not matters to which the Council can attach any weight.

CARAVAN LEGISLATION

5.5 The relevant legislation is the Caravan Sites and Control Development Act 1960 and the Caravan Sites Act 1968. Section 29(1) of the Caravan Sites and Control of Development Act 1960 defines a caravan 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 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".

5.6 In 1968 the Caravan Sites Act was enacted and this piece of legislation supplemented the earlier 1960 Act. The definition of "caravan" with regard to larger caravans known as "twin units" was further defined.

Section 13(1) of the Caravan Sites Act 1968 further defines a caravan as:

"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 Site and Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled."

5.7 Section 13(2) of the 1968 Act (as amended) sets out the 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.

5.8 Therefore, whether or not the proposed twin unit mobile home is a "caravan" will depend on (a) its size not exceeding the maximum dimensions (b) it being composed of no more than two sections separately constructed and designed to be assembled on site (the "construction test") (c) whether it is capable of being moved by road (the "mobility test") and (d) whether it is designed or adapted for human habitation. Each of these is dealt with in the following sections.

Caravan Size

5.9 The dimensions of the proposed lodge would be well within the maximum dimensions allowed by Statute and the Council is invited to view the plans submitted which have been carried out by a reputable company who work strictly within the legislation. Therefore, the proposed mobile home conforms to the size definitions of a caravan.

The Construction Test

5.10 For a caravan to satisfy the construction test it must be composed of no more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices. The leading case in relation to the construction test is Byrne v Secretary of State for the Environment and Arun District Council [1997]. At paragraph 25 of the Judgment it is stated "*The requirement is that the structure should be composed of not more than two sections 'separately constructed'*. That infers, that it was an essential part of the construction process in order to bring a structure which would not otherwise be a caravan, within the definition of that which is to be deemed a caravan, that there should be two sections separately constructed which are then designed to be assembled on a site by means of bolts, clamps or other devices."

5.11 Caravan manufacturers are familiar with the Construction Test for caravans and design and build their caravans so as to comply fully with the legislation. Twin-unit caravans are designed to conform to the 1968 Caravans Act so that for example (a) the central ridge beam is manufactured in two separate and dividable lengths, one to each half of the structure, joined together by means of bolts, fitted as the last act of construction and (b) partition walls for each of the two twin units are made from separate panels, permanently unconnected, allowing direct separation. The two halves are separately constructed and remain permanently unconnected only being joined by means of bolts, allowing the floor to split in two. Plumbing and electrics are fitted to allow for connection and disconnection of each individual half when assemble or disassembled.

5.12 The final act of construction is to join the two halves by means of bolts or clamps on site. The two halves of the twin-unit caravan remain physically separate and totally disconnected and independent, until the final act. The structure is totally unconnected and unfixed to the ground.

5.13 Once the unit is purchased, the applicants and the structural engineer will determine the appropriate foundation on which to place the unit. This will likely to be the urban

plinth detailed in Appendix A. The permitted development rights allow for a hardsurface within the curtilage of a dwellinghouse in most instances.

The Mobility Test

5.14 To satisfy the mobility test, the caravan must be capable of being moved by road (irrespective of whether it could lawfully be moved on the highway) as one structure. It must be structurally sound enough to move it without undermining its stability. In the case of Carter and another v Secretary of State for the Environment and another [1994], 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.

5.15 The case of Brightlingsea Haven Ltd and another v Morris and others [2008] deals with the issue of mobility. In particular, paragraphs 83 and 84 are key and they are copied below for ease of reference.

"[83] Section 13 of the 1968 Act requires that the structure "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) ": but it need not be capable of being lawfully so moved. The last provision appears to be because of width problems: I refer to Howard v Charlton, para 6. The phrase "from one place to another" also occurs in s 29(1) of the 1960 Act, but s 29(1) does not refer to "by road". Section 13 provides alternatives, movement by towing, and movement by loading onto a carrier. The two opposing constructions are these: whether the structure must be capable of being moved by road from one place to another, with no specific places or roads in mind, or whether the structure must be capable of being moved from where it is and moved by road to another place.

[84] I have concluded that the first construction is the correct one. My main reason is that it is consistent with the purpose of the Act that, if a structure is once a caravan, it should remain a caravan if it is itself unaltered, regardless of where it is. If a lodge meeting the requirements of the section and so a caravan is assembled on a site, it should not cease to be a caravan if it becomes boxed in by other lodges and cannot be got out because lifting apparatus cannot sufficiently approach. Likewise with the growth of trees. Likewise with the change of season making ground alternatively passable or impassable to equipment or the lodge. It is also very possible that the kind of caravan that is towed behind a car might be placed in a position from which for one reason or another it could not be moved, either temporarily, or permanently. It is surely unthinkable that it would then cease to be a caravan as defined in s 29 because "it was not capable of being moved from one place to another". I therefore decline to follow the view tentatively expressed by HHJ Rich in the Byrne case. In my judgment the test which the structure has to pass is as follows. It must either be physically capable of being towed on a road, or of being carried on a road, not momentarily but enough to say that it is taken from one place to another. It is irrelevant to the test where the structure actually is, and whether it may have difficulty in reaching a road."

5.16 The caravan must be capable (in the theoretical sense) of being moved. It does not cease to be a caravan just because it is not moved. The services will be easily detachable if it needs to be moved.

5.17 Caravans are designed and constructed to be moved from one place to another, either on their wheels attached to the chassis or by being lifted by crane and placed on an HGV trailer and transported around or off the site. The applicant will only be purchasing a caravan that meets the requirement of Section 13 of the 1968 Act that the structure 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). If the mobile home does not have wheels it must be designed to be moved by being lifted by crane onto a vehicle to be moved by road. Each mobile home designed in this way will have a unique engineering report containing lifting specifications. The engineering report will be available from the manufacturer once the mobile home is purchased by the applicant and the mobile home must be manufactured strictly in accordance with this report to ensure it is mobile. Failure to purchase a caravan meeting these requirements would enable the Council to take enforcement action.

5.18 A copy of the manufacturer's compliance report summary is included at Appendix A. This confirms that the mobile home will be constructed to comply with the two Caravan Acts and will be fully mobile.

Designed or adapted for human habitation

5.19 Whilst there is no definition within the Caravan Acts or the Town and Country Planning Act 1990 of "human habitation", there is a current Government Publication VAT Notice 701/20 on caravans and houseboats in which it states: "For a caravan to be regarded as designed for human habitation it must have the attributes of a dwelling, that is, it must consist of self-contained living accommodation. It would need to have washing facilities and the means to prepare food (such as kitchens and bathrooms)."

5.20 It is an essential requirement of a caravan that it consists of self-contained living accommodation. The fact that the proposed twin unit caravan has a kitchen and bathroom does not prevent it from being incidental or subordinate to the enjoyment of the main dwellinghouse.

Curtilage of the Main Dwellinghouse

5.21 The extent of land that comprises the curtilage of any particular dwellinghouse will always be a matter of fact and degree. One of the leading authorities on curtilage is Sinclair-Lockhart's Trustees v. Central Land Board (1950) 1 P&CR 195 in which it was held that:

"The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way."

5.22 The fundamental principle established by case law is that curtilage is not a land use but rather it is a description of land attached to a building. Therefore, curtilage does not represent a use of land for planning purposes, this is demonstrated by the fact that you cannot change the use of land to use 'as residential curtilage'.

5.33 The attached planning appeal of Hackness House, provides a very clear and useful summary of the law in this case by Inspector Cook only last year. I would ask the Council to consider the decision and in particular look at paragraphs 16,17,18 which states:

[16.] The courts have considered the issue of curtilage many times. Generally, it is held to be an area of land around the building the use of which is intimately associated with the use of the building. It is a fact and degree assessment in each case. I do not disagree with the Council's conclusion in this case that what amounts to the curtilage of the dwelling ends at the fence at the foot of the rear garden. To that extent, I agree with the Council that the caravan would not be sited within the curtilage of the dwelling.

17. However, it is not uncommon for the curtilage, which relates to a building, to be more limited in extent than the planning unit, which relates to the use of the land. As pointed out above, the stationing of a caravan on land is generally held to be a use of land. Whether or not that use amounts to a material change in the use of the land (as the Council may be arguing) and thus development for which planning permission is necessary, requires an understanding of the planning unit in the first instance. If the use of the planning unit does not change as a result of the development proposed and it remains a single planning unit, a material change in the use of the land is unlikely to occur. Critical to my determination therefore are matters relating to the planning unit.

18. In my judgement all of the uses I have described above as taking place throughout the whole of the appellant's landholding are those associated with the residential use of land. Having regard to the findings of the courts in this respect I conclude that the land is now a single planning unit in residential use.

5.34 In applying the attached Hackness House case reasoning and judgment, we need to demonstrate that the siting of the residential caravan is indeed ancillary to the main dwelling and therefore does not surmount to a material change of use. If there is no material change of use then planning permission is not required in any event as it would be permitted development. If the Council does consider that the location of the caravan falls short of the domestic curtilage then applying the Hackness House case, it is not uncommon for the curtilage to be more limited in extent to that of the planning unit. The stationing of a caravan is held as being a use of land, on this occasion the caravan does not and is unlikely to have any material change to the use of the planning unit.

5.35 Curtilage is very much a matter of 'fact and degree'. In the case of Lowe v First Secretary of State and another [2003] EWHC 537 (Admin) it was held that

"The expression "curtilage" is a question of fact and degree. It connotes a building or piece of land attached to a dwellinghouse and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house."

Incidental Use

5.36 In the Oxford English dictionary "incidental" is defined as meaning "occurring in connection with or as a result of something else". The use of the mobile home will occur as a result of the residential occupation of the main house.

5.37 The meaning of the word "incidental" has been examined by the Courts. In Whitehead v. SSE and Mole Valley DC [1992], a housekeeper's self-contained accommodation in an outbuilding was held to be incidental in relation to the overall owner's needs. In the case of Uttlesford District Council v Secretary of State for the Environment and White [1992], a self-contained residential unit created by the conversion of a garage, sited at the end of a garden, and used by the applicant's mother was considered by the High Court to be incidental to the enjoyment of the dwellinghouse as such. There had not been a creation of a separate planning unit. The fact that the accommodation had a bedroom, bathroom, lavatory, small kitchen, somewhere to sit and a separate front door did not, in law, create a separate planning unit simply because these facilities afforded a degree of independence.

5.38 There have been a number of planning appeal decisions confirming this approach. Of note is an appeal decision for a site in Somerset (appeal reference 2123391) in which the Planning Inspector stated "I accept that the accommodation, comprising a living area, bedroom, bathroom and kitchen area could provide facilities for a measure of independent living. It does not automatically follow however that such a facility is tantamount to a separate dwelling." This is further amplified by a more recent appeal decision (appeal reference 3166035) attached as Appendix B where the Inspector indicates that "the use of the mobile home in the manner described in the application would be a use that was part and parcel of the use of the existing dwellinghouse...If it subsequently transpired that the mobile home was being used in a different way to that described in the application, then the LDC would be of no

benefit to the appellant and it would be open to the Council to take appropriate action."

5.39 In the same decision, the Inspector indicated that the use of a mobile home for family members would be a use that was incidental to the enjoyment of the main house. Furthermore, the Inspector indicated "In any event, while comparative scale to the main house is a relevant consideration, it is not a determinative factor: the size of the proposed mobile home does not preclude it from being used for purposes incidental to the enjoyment of the dwellinghouse."

5.40 Therefore it appears to be the case that applicants do not need to clarify any further how the proposed mobile home will be used, other than as ancillary residential accommodation. This position sits comfortable with the Orpington decision (appeal reference APP/G/180/X/04/2000549) where the Inspector at paragraph 5 indicates "*In S192 applications…I am entitled to rely on the appellant's description of the proposed use of the building as ancillary residential accommodation. It is not necessary for the appellant to give examples of what that might mean or to describe a particular proposed type of occupation to add flesh to the description since it is a well-established concept in planning law... It would be for the occupier of the main house to comply in order to remain within the terms of the certificate and open to the council to take enforcement action if that ancillary link were lost."*

CONCLUSIONS

6.1 The issues to be considered as part of this application relate firstly, to whether or not the unit of accommodation meets all of the requirements of a 'twin-unit' as set out in the relevant legislation and, secondly, whether it has also been shown on the balance of probabilities that its occupation would be an ancillary residential use of the main house at Barfords Farm, Swineshead Road, Kirton Holme, Boston, PE20 1SQ.

6.2 The key elements of the submission are as follows:

* The additional accommodation provided would be within a mobile home as defined in the 1968 Act.

* The mobile home would be sited within the residential curtilage of the existing dwelling and would be purely ancillary to the host dwelling;

* It would be when sited, and will thereafter remain, a moveable structure;

* It would not be permanently affixed to the ground and no operational development would take place; only services would be connected;

* The use of the mobile home at all times would be ancillary to the residential use of the planning unit that is Barfords Farm.

* The occupiers of the mobile home have a close link with the occupiers of the main house and are very much part of the family;

* The mobile home would not be provided with its own separate curtilage; and

* The mobile home would not have a separate postal address and it would share the existing dwelling's utility services.

6.3 The Council should consider only the proposed use as described rather than a hypothetical use that the mobile home could be put to. If the mobile home were ever to be used separately from the main house the landowner could face enforcement action by the Council.

6.4 The final design of the mobile home is not relevant for the purposes of this application, although details of the anticipated purchase are included with this application. Failure to purchase a 1968 Act compliant "caravan" would leave the applicant open to enforcement action by the Council. Provided the applicant continues to satisfy the key elements set out in 6.2 above the Council would have no reason to take enforcement action.

6.5 For these reasons, and having regard to the submitted evidence, it is clear that there would be no material change in the use of the planning unit, and thus no development as defined by Section 55(1) of the 1990 Act would take place. A Certificate of Lawfulness of Proposed Use or Development, under the provisions of Section 192 of the 1990 Act, should therefore, respectfully, be granted.