

**WELWYN HATFIELD BOROUGH COUNCIL
ASSISTANT DIRECTOR (PLANNING)**

DELEGATED APPLICATION

Application No: 6/2023/1704/LAWP
Location: The Lodge 2 Northaw Place Coopers Lane Northaw Potters Bar EN6 4NQ
Proposal: Certificate of lawfulness for the siting of a mobile home for use ancillary to the main dwelling
Officer: Ms Kirsty Shirley

Recommendation: Granted

6/2023/1704/LAWP

Context	
Application Description	<p>A certificate of lawfulness is sought for the provision of a mobile home within the existing lawful planning unit to provide ancillary residential use for family as part of one household.</p> <p>The terms mobile home and caravan are used interchangeably in law, and the mobile home is referred to as a caravan in this report for consistency.</p> <p>Lawful Development Certificates under Section 192 are not the equivalent in law of a planning permission and therefore there are no issues of planning merits to be considered. The burden of proof to demonstrate lawfulness is upon the applicant.</p>
Relevant Planning History	<p>Application Number: 6/2023/1703/HOUSE Decision: Unknown Decision Date: Not yet determined Proposal: Erection of an outbuilding for ancillary use to the main dwelling</p> <p>Application Number: S6/1982/0020/FP Decision: Granted Decision Date: 18 February 1982 Proposal: Two storey extensions and detached garage</p> <p>Application Number: S6/1982/0021/LB Decision: Granted Decision Date: 18 February 1982 Proposal: Two storey extensions</p> <p>Application Number: S6/1989/0800/FP Decision: Refused Decision Date: 10 November 1989 Proposal: Erection of single storey building to house indoor swimming pool</p> <p>Application Number: S6/1997/0909/LB Decision: Granted</p>

Decision Date: 15 December 1997
 Proposal: Erection of two storey side extension and first floor rear extension

Application Number: S6/1997/0910/FP
 Decision: Granted
 Decision Date: 15 December 1997
 Proposal: Erection of two storey side extension and first floor rear extension

Application Number: S6/1998/0859/FP
 Decision: Granted
 Decision Date: 30 November 1998
 Proposal: Erection of a rear conservatory

Application Number: S6/1998/0937/LB
 Decision: Granted
 Decision Date: 30 November 1998
 Proposal: Erection of a rear conservatory, two storey side extension and first floor rear extension

Application Number: S6/1999/0097/FP
 Decision: Granted
 Decision Date: 15 March 1999
 Proposal: Erection of wooden trellis fence, a maximum of 1.5 metres in height

Application Number: S6/2000/0788/FP
 Decision: Granted
 Decision Date: 30 October 2000
 Proposal: SINGLE STOREY EXTENSIONS TO HOUSE AND GARAGE TO FORM ANNEXE FOR DEPENDANT RELATIVE

Application Number: S6/2000/0789/LB
 Decision: Granted
 Decision Date: 30 October 2000
 Proposal: SINGLE STOREY EXTENSIONS TO HOUSE AND GARAGE TO FORM ANNEXE FOR DEPENDANT RELATIVE

Application Number: S6/2001/0909/FP
 Decision: Granted
 Decision Date: 28 September 2001
 Proposal: ERECTION OF PART TWO STOREY, PART SINGLE STOREY SIDE EXTENSION

Application Number: S6/2001/0910/LB
 Decision: Granted
 Decision Date: 28 September 2001
 Proposal: ERECTION OF PART TWO STOREY, PART SINGLE STOREY SIDE EXTENSION

Application Number: S6/2006/1565/LB
 Decision: Refused
 Decision Date: 15 January 2007
 Proposal: ERECTION OF REAR TWO STOREY EXTENSION AND

DEMOLITION OF EXISTING GARAGE

Application Number: S6/2006/1564/FP

Decision: Refused

Decision Date: 15 January 2007

Proposal: ERECTION OF REAR TWO STOREY EXTENSION AND DEMOLITION OF EXISTING GARAGE

Application Number: S6/2007/0546/FP

Decision: Granted

Decision Date: 29 May 2007

Proposal: ERECTION OF TWO STOREY REAR EXTENSION, CREATION OF LIGHTWELL ON FIRST FLOOR, CREATION OF DOUBLE DOORS TO EXISTING CONSERVATORY AND INTERNAL ALTERATIONS.

Application Number: S6/2007/0549/LB

Decision: Granted

Decision Date: 29 May 2007

Proposal: ERECTION OF TWO STOREY REAR EXTENSION, CREATION OF LIGHTWELL ON FIRST FLOOR, CREATION OF DOUBLE DOORS TO EXISTING CONSERVATORY AND INTERNAL ALTERATIONS.

Application Number: S6/2014/0442/LUP

Decision: Granted

Decision Date: 30 April 2014

Proposal: Certificate of lawfulness for the proposed conversion of garage to habital accommodation

Application Number: S6/2014/0753/LUP

Decision: Refused

Decision Date: 30 May 2014

Proposal: Certificate of lawfulness for the erection of a detached outbuilding

Application Number: S6/2014/0980/LB

Decision: Granted

Decision Date: 30 June 2014

Proposal: Conversion of garage to habitable accommodation, including removing garage door, reducing the opening and installing a window to match existing

Application Number: S6/2014/1353/FP

Decision: Refused

Decision Date: 20 August 2014

Proposal: Erection of detached garage

Application Number: 6/2016/0153/HOUSE

Decision: Granted

Decision Date: 01 April 2016

Proposal: Replacement of existing timber fence along Coopers Lane with new timber acoustic fence

Application Number: 6/2019/0918/HOUSE Decision: Refused

	<p>Decision Date: 11 June 2019 Proposal: Formation of a new vehicular access following removal of existing close boarded boundary fence and erection of post and rail boundary fence and hedge</p> <p>Application Number: 6/2022/1508/HOUSE Decision: Refused Decision Date: 19 August 2022 Proposal: Erection of a two storey side extension</p> <p>Application Number: 6/2022/2530/HOUSE Decision: Refused Decision Date: 20 December 2022 Proposal: Erection of a part-single, part-two storey side extension and part subterranean extension</p>
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The main issues are:

Whether the proposed siting of a caravan for a use incidental to the existing land would be lawful under section 192 of the Town and Country Planning Act 1990 as amended

Discussion

It is proposed to site a caravan on land within the applicant's residential garden.

Section 192 of The Town and Country Planning Act 1990 (TCPA) 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, they 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. In a Lawful Development Certificate (LDC) application, the burden of proof to demonstrate lawfulness is therefore upon the applicant and the decision will be based strictly on the evidential facts. The planning merits of the matter applied for do not fall to be considered.

The essential consideration within this application is whether the proposed caravan would constitute 'development'. Section 55(1) of the TCPA defines development as: *The carrying out of building, engineering, mining or other operations in, on, over, or under land or the making of a material change in the use of any buildings or other land.* Section 55 (2)(d) of the Town and Country Planning Act makes clear that:

- (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;

... shall not be taken for the purposes of this Act to involve development of the land. This covers not only the use of buildings but also other incidental activities not in themselves constituting development.

There are two main issues to consider in this assessment:

a) Whether the installation of the caravan involves 'a building operation'?

A building is defined by Section 336 of the TCPA as: "*Any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building*". Established case law has identified primary factors that should be considered in determining what constitutes a building; whether it is of a size that is required to be constructed on site as opposed to being brought to the site; the degree of permanence; and whether the proposal would be physically attached to the ground. No one factor is decisive, and any judgement will be a matter of fact and degree based upon the specific circumstances of the case.

A caravan is defined 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. It excludes railway stock on rails forming part of the railway system and tents.

Section 13 of the Caravan Sites Act 1968 extends the definition of caravan to include twin unit caravans, which must be (in order to meet the expanded definition) 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. In metres, this equates to 20 metres in length, 6.8m in width and maximum internal floor to ceiling height in relation to the living accommodation of 3.05 metres. To meet this expanded definition, the proposal must meet what is usually referred to as the 'size test', the 'construction test' and the 'mobility test'.

With regard to the 'size test', the proposed caravan is designed for human habitation and the submitted plans and elevations show the maximum dimensions above are not exceeded, with the proposed caravan measuring approximately 3m in internal height, 6.4m in width and 13.5m in depth.

With regard to the 'construction test', the submitted planning statement states that the caravan will be assembled in two distinguishable parts on site and the final act of assembly is the bolting of the two parts together. Drawing 2153.07.23.7 Revision 3 that shows that the proposed caravan would be composed of two sections. These two sections would be separately constructed on the application site, and then joined together on the application site as the 'final act of assembly'. Previous lawful use decisions and appeal decisions are clear that there is no requirement for a caravan to be delivered to the site in two sections.

With regard to the 'mobility test', the planning statement states that the proposed caravan would not be physically attached to the land, instead resting on its own weight via a screw pile foundation system. This would permit a minimum ground clearance of 150mm, allowing for lifting straps or rig to be placed under the structure to then be lifted by crane and placed onto a flatbed lorry. The structure would not be physically attached to the land by anchors, foundations or similar which might represent a degree of permanence. Furthermore, it is not intended to be a permanent addition to the land and can be readily and simply removed once it is no longer needed. As a consequence, it is considered that the proposed caravan would be a moveable structure which is meant to be a temporary feature.

b) Whether the siting of the caravan involves a change of use?

The application form and supporting planning statement states that the existing use of the land is C3 (dwellinghouses) and the land would remain in this use as a result of the proposal.

Section 55(2)(f) of the TCPA states that *“in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class”*.

The parcel of land which is the subject of this application is in the ownership of the applicant. A site visit was carried out by the case officer and reference to the Council’s historic planning records, site plans and aerial imagery confirms that the proposed location of the caravan shown on plans accompanying the application is within what can reasonably be considered the residential curtilage of 2 The Lodge, which is occupied as a single dwellinghouse by the applicants. Historic site records, aerial imagery and site photographs support this view, whereby the land is not shown to be physically separated by any hard or soft boundary treatments, nor is it demarcated to be separate.

The planning statement confirms that the caravan would not be physically separated from the rest of the dwelling and garden. The caravan will entirely depend on the use of the utilities and services of the house, such as the internet and electricity. No new entrance will be created, nor address or postbox. Family using the caravan would share the access, parking and garden of the site. The caravan would retain a functional link with the main dwellinghouse. The caravan will remain ancillary to the primary use of the land, with relatives of the family occupying the space.

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. The question then becomes whether or not the proposed development would alter the use of the planning unit, affect its extent and/or create a new planning unit. As a matter of fact and degree, it is considered that the land would remain a single planning unit.

On this basis, and on the basis of the supporting case law, lawful use decisions and appeal decisions accompanying the application, it is considered that the use of the caravan does not constitute a material change of use of the land.

Conclusion

The proposed use would not involve a material change of use of the land and the caravan would not constitute operational development for which a grant of planning permission would be required.

Conditions:

1. On the date of receipt of the application the matter described above in respect of the aforementioned land and edged in red on the plan attached hereto, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended). The proposed use would not involve a material change of use of the land and the caravan would not constitute operational development for which a grant of planning permission would be required.

DRAWING NUMBERS

2. The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
2153.07.23.8	3	Proposed elevations	16 August 2023
2153.07.23.9	3	Proposed elevations	16 August 2023
2153.07.23.4	3	EXISTING LOCATION / BLOCK PLAN	16 August 2023
2153.07.23.5	3	PROPOSED BLOCK PLAN	16 August 2023
2153.07.23.6	3	Proposed section	16 August 2023
2153.07.23.7	3	Proposed floor plan	16 August 2023

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

Determined By:

Mr Mark Peacock
10 October 2023