

G R O U N D S F O R L A W F U L
D E V E L O P M E N T C E R T I F I C A T E

LARK RISE PONDFIELD LANE

SHORNE DA12 3LD



1 INTRODUCTION

1.01 These grounds accompany an application for a certificate of lawfulness of proposed use or development of the application site for:

- Stationing a 19.0m x 6.7m caravan, within the definition of a caravan in the Caravan Sites and Control of Development Act 1960 (as amended) to be used for residential purposes as ancillary accommodation to the existing dwellinghouse
- Laying a hardstanding 21.0m x 8.7m

2 LOCATION & DESCRIPTION

Location

2.01 The site is on the south side of Shorne, at the southern end of Pondfield Lane, about 250m from the junction with The Ridgeway.

Application site

- 2.02 The application site comprises a detached house, understood to have been built originally in the 1950s, and is in single dwelling use.
- 2.03 The plot is an irregular shape with the house set close to the eastern boundary and garden areas to the north, south and west. There is a large parking area in

front (north) of the house. The proposed siting of the caravan is to the south of the house, about 30m from it.

3 PROPOSAL

- 3.01 The proposal is to station a caravan and lay a hardstanding on which to stand the caravan at the property. The type of caravan proposed is shown in the drawings included in this application. The hardstanding would be a metre larger than the caravan in all directions.

Occupation

- 3.02 The house is occupied by the applicant and his family. The caravan would be used by members of the household as ancillary accommodation for the house, including guest accommodation, leisure/games room and, in due course, potentially, to accommodate the applicant's parents and/or parents in law.
- 3.03 The caravan would be used entirely in conjunction with the house, Lark Rise, by the resident family and their guests (friends and family) as additional accommodation to the house.
- 3.04 Any occupants of the caravan would share the garden and sitting-out areas of the house with the rest of the family.
- 3.05 There would be frequent coming and going between the caravan and the house.

Facilities & services

- 3.06 The caravan the applicants propose to station would have an open-plan living/dining/kitchen area, one bedroom and shower room. The caravan would connect to the septic tank serving house and to the water and electricity supplies from house. The services could be disconnected easily, should the caravan need to be moved. There would be no separate supplies or meters for the caravan. The caravan would not have a separate postal address.

Caravan

- 3.07 The dimensions of the proposed caravan would be 19.0m long by 6.7m wide with a maximum internal height of 2.9m. It would be a twin unit, constructed as

described in the mobile home compliance report summary, prepared by the manufacturer, Habitat Park Homes, submitted with this application. The proposed caravan would rest on blocks and would not be fixed to the ground. There would be small gaps under the caravan to allow it to be moved.

Access & parking

- 3.08 Anyone who would use the caravan would share the existing access and parking area at the front of the house. No separate access or parking spaces are proposed.

Demarcation

- 3.09 The proposed site of the caravan is not fenced. There is no proposal to create a separate garden or erect fences around the caravan and all users of the caravan would have direct access to the garden of the house.

Hardstanding

- 3.10 The concrete hardstanding would provide the base for stationing the caravan and would be about 21.0m x 8.7m. The part of the garden where the caravan would be stationed has a very slight slope (see Setting out plan, Section and Elevations F drawing).

4 PLANNING HISTORY

- 4.01 According to the council's website, the application property has been the subject of a number of planning decisions. These include planning permission 19560147, erection of a dwelling house (27 August 1956) and refusal to issue a lawful development certificate 20220913, proposed stationing of a mobile home in the garden of the property, for use for hobbies and an integral part of the overall use of the house (1 November 2022).
- 4.02 In respect of the latter, the grounds given for the determination included insufficient clarity or precision of information regarding operational development or a use of the land and whether the use would be for incidental purposes, the proposal would not be likely to meet the definition of a caravan and would not be likely to be used for incidental purposes.

5 RELEVANT LAW & POLICY

Definition of development

- 5.01 Section 55 (1) of the Town and Country Planning Act 1990 defines development as:

... the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

Operation or material change of use

- 5.02 It was held in Measor v Secretary of State for the Environment, Transport and the Regions [1998] that the mere stationing of mobile caravans and touring caravans on land would not be taken to involve any building operation, having regard to the factors of permanence and attachment.
- 5.03 Stationing a caravan is, therefore, a use rather than a building operation so it is necessary to consider whether a material change of use would occur.

Material change of use

- 5.04 In the case of Restormel v Secretary of State for the Environment [1982] it was held that, in order to ascertain whether development had occurred, where stationing caravans is concerned, it is necessary to look at the planning unit and to look at the use to which the planning unit is being put. If a caravan stationed on the land was being put to a use which did not amount to a material change of use, then there was no breach of planning control. This decision was approved by the Court of Appeal in Wealden v Secretary of State for the Environment and Day (1987).

Planning unit

- 5.05 The tests for assessing the extent of a planning unit were considered in Burdle v Secretary of State for the Environment [1972]. Bridge J suggested three broad tests for determining the appropriate planning unit:

First, that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered...

But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, 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.

Primary accommodation

- 5.06 In a ministerial planning decision, dated 23 September 1985 (JPL [1987] 144), the Secretary of State said:

Additions to the normal, basic, domestic living accommodation of a dwelling-house, such as bedrooms, which are normally to be expected as part and parcel of any dwelling's normal facilities, are not regarded, as a matter of fact and degree, as being 'incidental'; to the enjoyment of the dwelling-house as such for the purposes of Class I.3 [now Class E of the 2015 GPDO]; they are an integral part of the ordinary residential use as a dwelling-house.

... the Department's present view is that the use of an existing building in the garden of a dwellinghouse for the provision of additional bedroom accommodation is not now to be regarded as being 'incidental' to the enjoyment of the dwellinghouse as such for the purpose of s.22(2)(d) [now s.55(2)(d) of the 1990 Act]: it merely constitutes an integral part of

the main use of the planning unit as a single dwelling-house and, provided that the planning unit remains in single family occupation, does not therefore involve any material change of use of the land; in those circumstances it is now considered that there is therefore no need to rely on s.22(2)(d).

- 5.07 Although this appeal case concerned a garden building, there is no reason why the principle would not apply to a caravan in the garden of a house. Consequently, use of a caravan for primary living accommodation by members of a single household constitutes an integral part of the main use of a planning unit.

Definition of caravan

- 5.08 The term 'caravan' is not defined in planning legislation. The term is defined in section 29(1) 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 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;

- 5.09 The definition was refined, in relation to twin-unit caravans, by section 13(1) of the Caravan Sites Act 1968 as follows:

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 as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

- 5.10 All types of caravan must be able to accommodate human habitation.
- 5.11 All types of caravan must be physically capable of being moved by road by towing or on a trailer. It is not necessary to show that a caravan could actually be moved from its particular setting: Brightlingsea Haven Limited v Morris [2008].
- 5.12 In the case of a twin unit, a structure made in two sections which can be fixed together on site, will comply with the definition of a caravan, even if it could not be moved on a road lawfully because of its size (Caravan Sites Act 1968, section 13 (1)).
- 5.13 There is nothing in the statutory definition of a caravan concerning materials or appearance of a caravan.

Dimensions for twin units

- 5.14 Section 13 (2) of the Caravan Sites Act 1968 provides maximum dimensions for twin unit caravans. The dimensions set out in that section were amended by The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006, as follows:

(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).

Facilities

- 5.15 In Uttlesford DC v Secretary of State for the Environment and White [1992] the court considered a case where all the facilities of a self-contained unit were present in an outbuilding occupied by a family member and concluded:

In the end it amounts to no more than the fact that the elderly relative to be accommodated would have her own bedroom, bathroom and, I assume, lavatory, small kitchen, somewhere to sit and her own front door. To that extent she will be independent from the rest of her family.

I find no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.

- 5.16 It was held in Wealden v Secretary of State for the Environment and Day (1987), that; *'A typical caravan ... equipped with cooking, and washing and sleeping facilities, as well as space to sit ... designed for human habitation as a residence ...'* could still be properly regarded as part of the use of the agricultural land on which it stood.
- 5.17 Restormel v Secretary of State for the Environment [1982] established that it could not be decided; *'whether the material change of use had been made until you knew the purpose for which the caravan was to be used...'*.
- 5.18 It follows from these cases that the existence of facilities which could support independent occupation does not, in itself, create a separate planning unit or trigger a material change of use. The decision-maker must look at the nature of the use of the caravan.

Appeal and application decisions

- 5.19 The preceding points have been followed in many appeal decisions, where it was decided that planning permission was not required to station a caravan in a garden for occupation by members of the household (see 3151073, 3151264, 3162334, 3166035, 3170455, 3170963, 3183883 (costs awarded), 3212570, 3209244 (costs awarded), 3215344 (costs awarded) 3266375, 3269291, 3269440). The three most recent of these decision letters are attached as appendices A, B and C, respectively.
- 5.20 The council has issued a number of lawful development certificates for the siting of a single or twin-unit caravan within the garden of a dwelling house for ancillary use, including 20211547, Knights Place Farm, Cobham (31 March 2022), 20210223, Barncote, Meopham (19 April 2021), and 20200766, Suva, Harvel (16 Oct 2020).

Hard surfaces

- 5.21 Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 1, Class F gives permission within the curtilage of a dwellinghouse for:

Development consisting of –

(a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or

(b) the replacement in whole or in part of such a surface.

- 5.22 In Sinclair-Lockhart's Trustees v Central Land Board (1950) it was held that curtilage is the ground which is used for the comfortable enjoyment of a house and it is enough that it serves the purpose of the house in some necessary or reasonably useful way. In Dyer v Dorset County Council [1989] the Oxford English Dictionary definition was held to be adequate, which included '*the area attached to and containing a dwelling-house and its outbuildings*'. Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions [2000] established that smallness was not relevant to the definition of curtilage.

6 ASSESSMENT

Planning unit & primary use

- 6.01 The unit of occupation of the household is the house and its garden. The primary use of that property is use as a dwelling. It is possible to recognise a single main purpose of the occupier's use of this land (ie dwelling) and so all the application site is within the planning unit. The application site has been used as a separate single dwelling since the 1950s. The extent of garden, including the proposed siting of the caravan, was shown in the location plan of permission 19560147.
- 6.02 No new demarcation is proposed and no separate garden would be created. The caravan would be located close enough to the house for easy access. No separate access or parking area would be formed or used by the occupiers of the caravan. There would be no separate service connections for the caravan. The caravan would be located in the rear garden near the house. Such an arrangement would not lend itself to separate occupation of the caravan. No separate planning unit would be created.

Proposed use

- 6.03 The proposed users of the caravan are members of the family living in the house. The proposed caravan, in conjunction with the house, would accommodate members of a single household. The occupants of the house and their guests would spend some time in the caravan. The proposed living arrangements would entail comings and goings of family members between the caravan and house.
- 6.04 The proposal is to use the caravan solely as living accommodation additional (ancillary) to that which exists at present. The caravan would not be used as an independent unit of accommodation but would be part and parcel of the main dwelling. Consequently, there would be no material change of use of the planning unit.

Definition of caravan

- 6.05 The proposed caravan would be designed to accommodate human habitation. It would physically be capable of being moved by road by being transported on a motor vehicle. The caravan would be a twin unit, the dimensions of which would be below those specified in the Caravan Sites Act 1968, as amended. The unit proposed would comply with the definition of a caravan as set out in the attached mobile home compliance report summary prepared by the supplier.

Facilities

- 6.06 The proposed caravan would, like most commercially available caravans, contain facilities necessary to support human habitation. For the reasons set out in the preceding section, it is the use which must be considered, not the existence of facilities. Here the use would be part and parcel of the primary use of the planning unit, which would remain in single-family occupation.

Hard surface

- 6.07 The proposed concrete base for the caravan would be within the curtilage of the dwelling house, having regard to the criteria established in legal decisions set out at paragraph 5.22 above. It would be for a purpose incidental to the enjoyment of the dwelling house. The proposed work would be permitted by Class F of the General Permitted Development Order 2015, Schedule 2, Part 1.

7 CONCLUSION

- 7.01 The proposed use would not constitute development requiring planning permission. The application property would remain a single planning unit. The proposed use would be an integral part of the primary use of the planning unit as a single dwelling house in single family occupation. There would not be a material change of use of the planning unit. The proposed use would, therefore, be lawful. The laying of a base would come within the scope of permitted development and, therefore, not require express planning permission.

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