

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20240382
Location	60 Mitchell Avenue Northfleet Gravesend Kent
Proposal:	Application for a Lawful Development Certificate for the proposed siting of a caravan (mobile home) for residential occupation ancillary to the main dwelling.
Applicant:	Mr J Cheshire
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form Dated 24/04/2024;
 Site Location Plan and Block Plan – Existing;
 Block Plan – Proposed;
 Supplementary Information – Photo of Mobile Home – Floor plan;
 Supplementary Information – Photos of Mobile Home (1);
 Supplementary Information – Photos of Mobile Home (2);
 Supplementary Information – Photos of Mobile Home (3); and
 Supplementary Information – Planning Statement.

Relevant Planning History

Reference	Description	Decision	Decision Date
19780939	Erection of conservatory at the rear	Permitted	30.01.1979

Development Plan

This is an application for a Lawful Development Certificate (LDC) considered against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and not local or national planning policies.

Officer Analysis

Proposal

This application is for an LDC for the proposed siting of a caravan for ancillary residential use in the rear garden on 60 Mitchell Avenue. The application form, planning statement, plans and photographs submitted in support of the application, provide the following information:

- The proposal is for a caravan as defined under the 1960 and 1968 Caravan Sites Acts (as amended);
- The caravan will measure 12.8m long x 4m wide, with an internal height of 2.7m;
- The caravan would not constitute development under section 55(2)(d) of the Town and Country Planning Act 1990 (as amended);
- The application site is a single planning unit consisting of 60 Mitchell Avenue and its garden grounds, as outlined in red on the site location plan, the proposed caravan would be located within the residential curtilage of 60 Mitchell Avenue;
- The caravan would, when installed and thereafter remain a moveable structure;
- The caravan would not be permanently affixed to the ground.
- There will be no material change of use of land;
- The caravan would be used as residential occupation for the applicant and his wife. His mother and her son and step-son reside in the main house.
- The caravan would not have a separate postal address, will not be separated from the main dwellinghouse and will not be registered as a separate unit of occupation with respect to the payment of Council Tax, services, parking or access;
- The caravan will not be used as a separate residential dwelling.

General approach - Lawful Development Certificate

This application is for a Lawful Development Certificate (LDC) and not for a planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be of sufficient clarity and precision to enable the local planning authority to understand exactly what is involved. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

<https://www.gov.uk/guidance/lawful-development-certificates>

The applicant has set out that the proposed development would meet the definition of a caravan and as such, would be a use of the land and not operational development and that the siting and use of a caravan for incidental and/or ancillary residential purposes, within the existing residential planning unit, would not constitute development.

Section 55(2) (d) of Part 3 of the Town and Country Planning Act 1990 (as amended) sets out that 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 constitute development. Therefore, the starting point for assessing this application is to establish whether the proposal constitutes operational development or a use of the land

The applicant describes the proposal as an incidental and/or ancillary caravan. The definition of a caravan is set out in the Caravan Sites and Control of Development Act 1960, as supplemented by the Caravan Sites Act 1968 and is summarised 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 being transported on a motor vehicle or trailer, and any other motor vehicle so designed or adapted, subject to certain exceptions. Units of not more than two sections, constructed or designed to be assembled on site by means of bolts, clamps or other devices and not exceeding 20 metres by 6.8 metres externally and internally 3.05 metres when measured from internal floor to ceiling.

Would the proposal meet the definition of a caravan?

With regard to the caravan definition, case law has established three tests which are relevant to the assessment of whether a development is a caravan or a building;

- (1) The size test;
- (2) The mobility test; and
- (3) The construction test.

The size test

To meet the definition of a caravan, a structure must not exceed 20 metres by 6.8 metres externally and internally 3.05 metres (when measured from internal floor to ceiling). The proposed development would have external dimensions of 12.8 metres length by 4 metres width and a maximum internal height of 2.7m. As such, the proposal would meet the definition of a caravan in terms of size.

The mobility test

To meet the definition of a caravan, a structure must be capable of being moved. Where a structure has a degree of permanence, through being physically attached to the ground, for example where wheels are removed, brick surrounds are constructed or permanent connections to main services are provided, a structure is no longer able to be moved and it is more accurately described as a building.

The proposed development would not be permanently affixed to the ground and no operational development would need to take place, it would rest under its own weight, on 'ground screws' or similar'. The application states that connections for services would be in place but are easily reversible and are not separate to the main house. It is also noted that the connection of services alone would not amount to a permanent structure. As such, the proposal would meet the mobility test.

The construction test

To meet the definition of a caravan, a structure must be formed of a maximum of two sections constructed or designed to be assembled on site by means of bolts, clamps or other devices. The act of joining the two sections together should be the final act of assembly and the caravan should be capable of being moved as a single structure. The applicant advises that the unit would be a single unit and is capable of being moved as one unit. As such, the proposal would meet the construction test.

Overall it is considered that the proposed development would meet the definition of a caravan and be a use of the land and not operational development.

Referring back to Section 55(2)(d), it is now pertinent to consider whether the proposed development would be located within the curtilage of the dwellinghouse known as 60 Mitchell Avenue and if its purpose would be incidental to the enjoyment of the dwellinghouse as such.

Would the proposal be within the curtilage of the dwellinghouse?

Case law informs us that there are three criteria which are relevant in the determination of whether land is within the curtilage of a building;

- (1) Physical Layout;
- (2) Past and present ownership; and
- (3) Past and present use or function.

Bearing these criteria in mind, it is concluded that the proposed location for the caravan is within the residential curtilage of the dwelling known as 60 Mitchell Avenue. The plot within which the dwelling is located is separated from the surrounding neighbouring plots is separated by fencing or hedging.

Therefore it is considered that the land on which the caravan would be located forms part of the curtilage of the dwelling known as 60 Mitchell Avenue.

Would the proposed development be used for purposes incidental to a dwellinghouse?

The Department of Communities and Local Government Technical Guidance Permitted Development Rights for Householders (April 2019) is helpful giving clarity to the range and type of uses that can be considered as being for a purpose incidental to the enjoyment of a dwelling. It states;

A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

Whilst it is acknowledged that this advice is in the context of assessing proposals for Class E permitted development, i.e. outbuildings, it provides useful background information.

In planning law there is a fundamental difference between an **ancillary** residential use - generally anything a person could do normally in a standard house as built e.g. eat, sleep, sit comfortably, pray, study, watch TV, shower and an **incidental** residential use - generally everything else, including storage, swimming, bowling, gym, art studio, or something that can be classed as a hobby. An incidental use is "parasitic" on the primary use - it cannot exist without it.

Case law informs us that in terms of assessing whether the proposed development would be an incidental use, there are four relevant considerations;

- (1) The relationship between the respective occupants of the dwelling and the proposed development.
- (2) The relative size of the dwelling, its garden and the proposed development.

- (3) The relative scale of the accommodation contained within the dwelling and the proposed development.
- (4) The degree to which the proposed development is functionally connected to and subordinate to the use of the dwelling.

The relationship between the respective occupants of the dwelling and the proposed development.

Whilst the caravan, by way of its size and facilities, could be considered to be used as a separate independent dwelling, the planning statement highlights that the applicant has set out that the proposed development would be used for incidental and/or ancillary use by her son and daughter-in-law. The mobile home would be used to provide sleeping accommodation for the applicant and his wife. His mother and her son and step-son reside in the main house. The family purchased the house together due to being unable to afford separate properties, and it is essentially one household.

The occupants will maintain a reliance on the main dwelling and be used interchangeably for example will continue to utilise domestic appliances such as the washing machine at the main dwelling. They would also share the outdoor amenity space and there are no proposals to subdivide the curtilage or to rent out or sell the unit of separately. Furthermore, the proposed location of the mobile home unit in itself does not lend itself to being subdivided from the main dwelling and will not have a separate address.

Highlighted within the planning statement is Appeal Ref: APP/T3725/X/21/3266375 12 Warmington Grove, Warwick CV34 5RZ which states:

'Much depends on how the unit [mobile home] would actually be used and the proposal should be assessed on the basis of the stated purpose and not what might possibly occur.'

In the mentioned appeal (APP/T3725/X/21/3266375, Appendix I), the intended occupant of the mobile home was the appellants' Godfather. At the time of the application, the Godfather was residing at the appellants' residence. Given the Godfather's health issues and the anticipation of another baby within the applicant's household, the provision of the mobile home was deemed necessary. The rationale behind this decision was rooted in the understanding that the limited space within the main dwelling, coupled with the impending addition to the family, would make accommodation challenging. The introduction of the mobile home was a strategic measure to ensure that the Godfather could continue to stay with the appellants. This arrangement aimed to facilitate close support and assistance in managing the health and well-being of their Godfather, thereby addressing the unique circumstances and needs of the occupants.

The Inspector concluded the following

*...there would be a family and functional link with the land which would remain in single ownership and control. The proposed use of the mobile home in the manner described would not involve physical or functional separation of the land from the remainder of the property. The character of the use would be unchanged. Thus, **the use described would form part of the residential use within the same planning unit. Only if operational development which is not permitted development is carried out or if a new residential planning unit is created, will there be development.***

Overall, it is considered that as the caravan would be used by the owner of the property due to limited space within the main house due to this being occupied by his mother and her other sons.

The relative size of the dwelling, its garden and the proposed development.

The existing two storey dwelling at the application site has a building footprint of approximately 59.6 square metres, measured externally. The habitable accommodation within the existing dwelling is then provided over two storeys with 3 bedrooms.

The application site is approximately 288.62 square metres in area.

The proposed development (single storey caravan) would have a footprint of 51.2 square metres which would be a smaller footprint to the existing dwelling.

It is acknowledge that the caravan is quite large in footprint. However outbuildings of similar scale can be constructed without the need for planning permission, covering up to 50% of the garden area, and so larger than the proposed caravan. It is therefore considered on balance that the size of the proposed development in comparison to the host dwelling and the site that it sits within would not be excessive.

The relative scale of the accommodation contained within the dwelling and the proposed development and the degree to which the proposed development is functionally connected to and subordinate to the use of the dwelling.

The floor plan for the caravan shows 2 bedrooms, 2 bathrooms and open plan living room and kitchen area. The area would be 51.2 square metres which would be less than the footprint of the host dwelling so it does not appear to be excessive. The scale of the space provided appears subordinate to the dwelling and the wider application site. Although the caravan is capable of being used as a separate dwelling this is not the case here as stated by the applicant. Also there is a significant amount of case law and planning appeal decisions that state that because the unit is capable of being a separate dwelling, this does not mean that this will be the case and so is not sufficient to refuse to grant an LDC. An example of GBC appeal decisions as below can be found in the appendices:

GBC Appendix 2 – Appeal Ref: APP/K2230/X/18/3212570 Leighton, Sole Street, Cobham, Gravesend DA13 0XZ

GBC Appendix 3 – Appeal Ref: APP/K2230/X/13/2190398 7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL

The use of the caravan is for the applicant and his wife. His mother and her son and step-son reside in the main house. It is stated that there is no intention that the caravan will be made available for separate, independent, residential use. The services such as water and electrical supply would be shared by the main property and the caravan will not be registered a separate unit of occupation with regards Council Tax. There would be no physical separation of land. Therefore, it is considered that the proposed use would constitute a close functional connection between the occupiers of the caravan and the main dwelling as it would be used by the occupiers themselves.

Overall, taking the four factors into consideration, it is concluded that the proposed development would be used for purposes incidental to the dwelling at the application site.

Conclusion

The proposed development would, based on the evidence provided, be a caravan that would be located within the curtilage of the dwellinghouse known as 60 Mitchell Avenue and be used for purposes incidental to the

enjoyment of that existing dwellinghouse. The submitted details have been considered carefully and have informed this analysis of the proposed development. There is a fine judgement here given that the caravan could easily be construed as and regarded as a building or that it will be used a separate residential dwelling. The submitted details, case law and appeal cases cited by the applicant have been considered carefully and have informed this analysis of the proposed development.

As a matter of fact and degree and taking into account relevant planning law, planning appeal decisions and judicial authority, it is the opinion that the proposed development would not amount to development requiring planning permission, provided that it is used in line with the submitted application details.

Recommendation:

Grant Certificate of Lawfulness – Proposed Development

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Recommendation: <u>Grant</u> Lawful Development Certificate
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Case Officer:	Mrs Nina Goodbody	Team Leader:	Miss Faye Hobbs
Signed:	<i>N Goodbody</i>	Signed:	
Dated:	17th June 2024	Dated:	19 June 2024

List of Appendices

GBC Appendix 1 - Appeal Ref: APP/T3725/X/21/3266375 12 Warmington Grove, Warwick CV34 5RZ

GBC Appendix 2 – Appeal Ref: APP/K2230/X/18/3212570 Leighton, Sole Street, Cobham, Gravesend DA13 0XZ

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