

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF
LAWFUL DEVELOPMENT**

Reference no.: 2023/CL/91351/W

Site: 108, Penistone Road, Waterloo, Huddersfield, HD5
8RN

Description: Certificate of lawfulness for siting of
caravan/annex, incidental to the enjoyment of the dwellinghouse

Case Officer: Chris Cockroft

Decision Reference: PROPOSED USE REFUSE

**I hereby authorise the refusal of this application for the reasons set out
in the officer's report and recommendation annexed below in respect of
the above matter.**

Kevin Walton

AUTHORISED OFFICER

Date 13-May-2024

APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED

Applicant: A Page

Site: 108, Penistone Road, Waterloo, Huddersfield, HD5 8RN

Description: Certificate of lawfulness for proposed siting of caravan/annex incidental to the enjoyment of the dwellinghouse.

Application Number: 2023/91351

1.0 Application

1.1 The application site is 108 Penistone Road a two-storey dwelling forming the eastern end property in a row of three townhouses. Its front elevation faces diagonally towards Penistone Road, which lies to the east. The property has had a substantial two-storey extension added to its southern side. The northern and eastern elevations face on to a large hard-surfaced yard with a small landscaped area near to the northern end of the site.

1.2 The applicant seeks a certificate of lawful development from the Local Planning Authority to confirm that the land can be lawfully used for the siting of a caravan to be used as a domestic annex. The proposal is that the caravan be placed at the northern corner of the curtilage, in the front garden, adjacent to Penistone Road. The proposed caravan would measure 13m by 5m according to the scaled plans.

2.0 Lawful Use Certificates

2.1 Section 191(1) of the Town and Country Planning Act 1990 (“The Act”) permits any person who wishes to ascertain whether any operations or existing use of buildings or other land would be lawful to make an application to the Local Planning Authority.

2.2 Section 191(2) of the Act provides if any person wishes to ascertain whether –

(a) Any proposed use of buildings or other land is lawful

(a) Any operations which have been carried out in, on, over or under land are lawful; or

(b) Any other matters constituting a failure to comply with any condition or limitation subject to which planning permission has been granted lawful he may make an application for the purpose to the local planning authority specifying that the land and describing the use, operations and other matter.

For the purposes of the Act, a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force.

3.0 The Relevant Test

The burden of proof lies firmly with the applicant and the relevant test for whether the operations can be deemed lawful is in the 'balance of probability'.

The Applicant's evidence does not need to be corroborated by 'independent' evidence. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

4.0 Limitations

The Lawful Development Certificate can contain precise details of what use or operations are found to be lawful, why and when. The details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against at which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a 'material' change of use takes place, the Local Planning Authority may then consider further development has taken place.

5.0 Relevant Planning History

2003/90075 – Erection of two-storey extension and conservatory. Approved.
2022/93103 – Erection of outbuilding to front. Withdrawn.
2022/93744 - Certificate of Lawful Proposed Development. Refused

6.0 Evidence submitted in support of the application

6.1 A Planning Statement was submitted which sets out to demonstrate that the siting of a caravan or mobile home on the land for purposes ancillary to the main dwelling does not constitute operational development or a material change in use, meaning it does not require planning permission. In the context of the planning system, the terms "caravan" and "mobile home" may be regarded as synonymous. The key arguments within the statement are summarised in paragraphs 6.2-6.7 below:

6.2 The placing of a caravan on land, even for prolonged periods, is a "use" of the land rather than "operational development". This is because a caravan is regarded as an article of moveable personal property, i.e. a chattel.

6.3 To be classed as a caravan under the Caravan Sites Act 1968, the courts have derived a number of key tests i.e.: 1) size; 2) mobility; 3) construction. The statement sets out to demonstrate compliance on all three criteria.

6.4 *Size*: The statement notes that the size of the proposed "caravan" is within the relevant limits under the Caravan Act. The applicant states the structure will be 13 metres in length, 5 metres in width and no higher than 3.05 metres.

6.5 *Mobility*: It states that the structure is physically capable of being moved from one place to another by being towed or transported on a motor vehicle or trailer. It will rest its foundations under its own weight instead of being fixed to them. In the event of it needing to be moved, it would be lifted or moved as a whole unit.

6.6 *Construction*: The structure would be assembled on site from a kit of parts. The supporting statement has been re-written with the aim of eliminating ambiguities and discrepancies with the plans that have been highlighted by the case officer.

6.7 The statement further claims that temporary attachment to services does not constitute permanence.

6.8 The statement claims that the proposed caravan would be incidental or ancillary to the use of the existing dwelling. It is intended for a member of the applicant's family and not for private rental or visitor accommodation. It is deemed to be small-scale compared to the existing house. It will lack a separate address, mailbox, utility meter, separate broadband, phone or television, parking or access and will not have its own curtilage. It is therefore deemed to be functionally connected to, and subordinate to, the original house.

6.9 The applicant was requested to provide for more information about the model, make and construction of the caravan. They were unable to provide this information.

7.0 Evidence submitted against the application

7.1 No publicity was undertaken since this is not a statutory requirement under the Development Management Procedure Order, nor is it a standard procedure in Kirklees in the case of a certificate of lawfulness for proposed use or development.

7.2 There is no statutory requirement on the part of the Local Planning Authority to actively publicise an application of this type. No representations were made.

8.0 Site Visit

8.1 A site visit by the case officer was considered to be unnecessary in this instance.

9.0 Assessment of evidence

9.1 The applicant's basis for the Certificate of Lawfulness is that it would not constitute building or operational development but a "use" of the land, and as such would not constitute development within the meaning of Section 55 of the Town & Country Planning Act.

9.2 A structure that meets the definition of a caravan as set out in the paragraph below may be deemed to be a chattel, that is, moveable property, and therefore would not constitute a building or operational development. To assess the applicant's case it is necessary to, in the first instance, to assess whether the structure fulfils the definition of "caravan".

9.3 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 being towed, or by being transported on a motor vehicle or trailer)". Section 13 (1) of the Caravan Sites Act 1968, in brief, defines a twin-unit caravan as a structure for human habitation composed of not more than two sections and which is designed to be assembled on site by means of bolts, clamps or other devices, and again must be capable for being towed or transported on a motor vehicle or trailer. These definitions have been held to be valid for planning purposes and will be used for the purposes of assessing this application.

9.4 The size limits under the Caravan Sites Act 1968 (amended 2006) are 20m length, 6.8m width and 3.05m overall height (measured internally). The dimensions of the proposed structure, based on those set out in the supporting statement and which are corroborated by the scaled site plan, would be below the maximum allowed under the Act. The annotated floorplans and elevations confirm that the external dimensions of the completed structure would be 13m length, 5m width, and no more than 3.05m in height (measured externally), and therefore meeting the size test.

9.5 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 being towed, or by being transported on a motor vehicle or trailer)".

9.6 The term "structure or adapted designed for human habitation" would, taken in isolation, imply something built as a single, self-contained unit and capable of functioning as a dwelling, and would not imply a structure that consists of more than one discreet unit, separately assembled. The significance of the 1968 Act is that it expanded the definition to include twin-unit caravans. In *Byrne v Secretary of State for the Environment & Arun* (1997) it was ruled that: "*The form of the 1968 Act therefore, is in effect a deeming provision to deem something which would not be treated within the meaning of the 1960 Act as 'a caravan' as being 'a caravan' if it satisfies [the construction and mobility tests set out in the 1968 Act]*". In other words, the 1968 Act expands the definition of "caravan" to include a caravan composed of two separately assembled units (which may, or may not, be individually identifiable as "caravans"), but no more than two.

9.7 However, it is noted the Court¹ held that while a caravan would not generally fall into the typical definition of a building, the judge commented that as a matter of law it does not follow that a structure that may be defined as a caravan under the Caravans Sites Act 1968 could never be a building for the purposes of the Town and Country Planning Act 1990. In all circumstances the onus is on the applicant to provide sufficient information to demonstrate the development is on the balance of probabilities lawful. National Planning Policy Guidance [NPPG] states:-

“the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the status of the land.”. NPPG also goes on to state “in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved,”

9.8 In this instance the applicant simply states the unit will have structural integrity to be able to be craned or moved as a whole unit. While it may be more likely for a single unit brought in one piece to the site to be capable of being craned into position, the applicant in this case states the unit will be constructed in two pieces whilst being erected on site. However, the applicant does not provide any clear evidence of structural integrity other than to state the positioning will give clearance off the ground for lifting straps/rig to be placed under the structure. It appears therefore that the structure can only be lifted once constructed when additional rig/straps are put into place. It appears the additional rig/straps would not form part of the structure and as such cannot likely be lifted without additional support. Consequently the applicant has not provided the Local Planning Authority with information of sufficient clarity and precision to understand what is involved to ensure the Local Planning Officer can be satisfied the structure falls into the definition of a caravan.

9.9 With regard to the question of “building operations”, the Courts have held in several cases that such operations can be assessed in terms of size, permanence and attachment to the ground. In this case, the proposed structure is stated to be erected on site although does not provide precise details how the structure will be erected. However, in light of the size of the proposed unit it is more likely the operations would involve a significant degree of construction work, at the minimum, to position and attach two large individual constructions together. The size alone, once complete, would amount to the construction of a building in its finished form.

9.10 In terms of permanence, the applicant has not indicated the length of time the structure will be in place. However, given its proposed residential use, it is likely the structure is to be there for an indefinite period of time. The

¹ Measor v SSETR [1999] JPL 182

proposed structure does not therefore result in a structure of a fleeting character but due to its size has more of an air of permanence.

9.11 The applicant states the structure will not be attached to the ground but that it will rest on foundations under its own weight. From this statement it is clear the structure requires some degree of foundations in order to be constructed and despite the “resting” of the structure, the weight alone is considered to amount to attachment to the ground via the foundations.

9.12 Overall, it is considered the structure is not capable of being considered a caravan and amounts to building operations resulting in the construction of a new building.

9.13 As no planning permission from the Local Planning Authority exists for the building it may only benefit from a general planning permission under the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015(as amended) if the relevant limitations are met under Class E of the Order. In this instance the building would fail on sub-paragraphs (c), (e) and (f) in that the building is forward of the principal elevation of the dwellinghouse and over 2.5 metres in height.

9.14 Moreover, the building cannot be permitted under Class E as the proposed use is not considered to be incidental to the enjoyment of the dwelling or ancillary in the event it can be demonstrated the structure is a caravan.

9.15 It is well established that a building under Class E cannot provide primary living accommodation. The applicant states the building is for residential accommodation for family members and floor layout clearly shows the building to consist of a kitchen/living room, two bedrooms and bathroom. This is considered to go beyond incidental and/or an ancillary use to the adjacent dwellinghouse. The building is capable of comfortable independent separate living accommodation without reliance on the dwellinghouse. While it is stated the occupants would share meals at the dwellinghouse, the independence of the building including openings in the boundary wall to allow separate access appears to result in the corner of the existing garden being used to for independent residential use. It is considered the erection of the structure amounts to a functional and physically separate residential unit thus resulting in a material change of use of the land.

10.0 Recommendation

Based on the evidence it is considered that on the balance of probabilities the applicant's has not demonstrated the proposed erection of the structure amounts to a use of the land rather than operational development. the proposed structure is considered to be a building operation without the benefit of planning permission.

Recommendation: Refuse Certificate

Decision Authorisation - Delegated Powers

Application Number: 2023/91351

Officer Recommendation: Refuse Certificate

It is considered at the time of this application and on the balance of probability, the evidence provided and that held by the Local Planning Authority does not demonstrate that the proposed structure is not a building for the purposes of the Town and Country Planning Act 1990 or that the use of the structure either benefits from or does not require a grant of planning permission.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application Form	988949		09/05/2023
Location Plan	999497	V.2	21/072023
Proposed Elevations	999495	V.2	21/072023
Proposed Site/ Block Layout	999494	V .2	21/072023
Proposed Floor Plans	999496	V.2	21/072023

Report Date: 03/04/2024