

**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/92084/W

Site: Rivendell, The Hollow, Meltham, Holmfirth, HD9
5LA

Description: Certificate of lawfulness for proposed use of land
for siting of a mobile home

Case Officer: Laura Yeadon

Decision Reference: REFUSED

**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 11-Sep-2023

APPLICATION = CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF LAND FOR SITING OF A MOBILE HOME

REFERENCE – 2023/92084

SITE – RIVENDELL, THE HOLLOW, MELTHAM, HOLMFIRTH, HD9 5LA

1. Summary

- 1.1 The application seeks a determination from the Local Planning Authority to confirm a proposed use of the land for the siting of a mobile home that is to be used for purposes ancillary to the residential use of the dwelling house at Rivendell (see page 3 of the submitted Planning Statement).

2. Site

- 2.1 Rivendell is a large, detached dwelling which is located within a large curtilage. The property itself is constructed from stone with a tiled roof and is two storeys in height. The property is set down from the roadside and is accessed off The Hollow. The property has been previously extended and to the east of the site is a detached double garage and outbuilding. There is also a detached timber storage shed. Garden areas surround the property to the north, east, south and west. Meltham Dike runs alongside the property which is to the south of the site.
- 2.2 Surrounding the site is dense woodland which screens the property from its neighbours. The property and associated outbuildings are visible from public vantage points on The Hollow.

3. Development Proposal

- 3.1 The applicants are proposed to site a mobile home between 5.3m and 3m (at closest point) from the eastern gable of the dwellinghouse. The submitted Planning Statement states that the proposed size of the mobile home would be 13.05m in length, 5.55m in width and 3.0m internal head height and overall external height of 4.5 metres. This accords with the submitted elevational drawing and floor plans.
- 3.2 The mobile home is orientated with the west facing elevation (facing the dwellinghouse) containing french doors, elongated light openings and a window opening (incorrectly indicated as north elevation on plan), a north facing elevation which contains one window opening and a door opening, an east facing elevation which contains 3 no. window openings and a south facing which contains 1 no. window opening (incorrectly indicated on east elevation on plan).

- 3.3 The mobile home consists of 2 no. bedrooms, shower room and a kitchen/living area. The submitted Planning Statement states that the mobile home is to be occupied by the applicant's parents, to enable them to receive care and support from the applicants, due to advancing age and declining health.

4. The Law

- 4.1 Section 192(1) of the Act provides that if any person wished to ascertain whether any operations proposed to be carried out in, on, under or over land would be lawful they may make an application to the LPA. If upon application the LPA are satisfied that the operations described in the application would be lawful if instituted at the time of the application the LPA shall issue a Certificate to that effect. In any other case the LPA shall refuse the application.

- 4.2 Section 191(2) of the Act states that for the purposes of the Act, 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)....”

- 4.3 Section 55(1) of the Act provides the definition for development and includes the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in use of any building or other land. Section 55 (2)(d) exempts from the definition of development, 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. Relevant Planning History

- 5.1 Previous applications relating to the site include:

1988/00027 – Erection of one detached house – granted conditionally 18/03/1988

2004/92000 – Erection of ground and first floor extensions – approved 23/06/2004

2023/92083 – Demolition of existing outbuilding and erection of detached building to create dwelling forming annex accommodation associated with Rivendell, The Hollow, Meltham, Holmfirth, HD9 5LA – under consideration – not yet determined

2023/92233 – Prior notification for demolition of outbuilding/garage – Details approved 22/08/2023

5.2 Enforcement investigations:

COMP/14/0127 – Alleged breach of planning operation as a Kennels – no evidence of breach

6. Site visit

- 6.1 A site visit was carried out. No observations were made beyond the information otherwise held or available. There was concern regarding the location of the proposed mobile home and its proximity to the overhanging trees to the eastern boundary of the site. As a consequence, the Council's Arboricultural Officer was formally consulted as part of the allied planning application under number 2023/92083. Comments are awaited.

7. Relevant Test

- 7.1 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 holds about the status of the land.” The NPPG also goes on to state that *“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.”*

- 7.2 Where an existing use is at question NPPG advises the LPA that provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate *“on the balance of probability”* then there is no good reason to refuse the application.

8. Evidence Submitted

- 8.1 The applicant has provided a series of drawings showing the position and design of the mobile home along with a Planning Statement. The information submitted is listed below:

Application form – no reference number – Received 12th July 2023

Existing location plan and block plan – ref: 2150.06.23D 04 – Received 18th July 2023

Proposed block plan – ref: 2150.06.23D 05 – Received 18th July 2023

Proposed floor plan – ref: 2150.06.23D 06 – Received 18th July 2023

Proposed elevations – ref: 2150.06.23D 07 – Received 18th July 2023

Proposed elevations (incorrectly annotated) – Ref: 2150.06.23D 08 – Received 18th July 2023

Proposed cross section – ref: 2150.06.23D 09 – Received 18th July 2023

Planning Statement – ref: JD/1412/JM/RM – Received 12th July 2023

9. Representations

9.1 None received

10. Publicity

10.1 None

11. Assessment

11.1 The applicant's Agent sets out the case for granting the certificate within the submitted Planning Statement. This is supported by a letter from the applicant under Appendix D of the Statement. In summary and within page 3 of the Statement the grounds for claiming the siting of the mobile home are lawful are predicated on the locating of the home being a use of land rather than 'operational development' and as such the proposed use to accommodate the applicant's parents does not constitute a material change of use of any buildings or use of the land.

11.2 The applicant provides a detailed analysis of the definition of a caravan as set out in the Caravan Sites Act 1968 and the Caravan Sites and Development Act 1960 (see pages 4-8 of the Planning Statement). It is claimed that the "tests" to be applied when considering whether or not a caravan is, by definition a caravan turns on three key tests which are:

- a) size;
- b) mobility; and
- c) construction

The Agent states that the mobile home should be classed as a caravan by definition and claim the overall size is within the statutory size of a caravan. It is also claimed that the mobile home by virtue of its structural integrity can be lifted as a whole unit and placed onto a flat bed lorry and placed on a screw pile foundation

system with a minimum ground clearance of 150mm. The Planning Statement goes on to refer to several planning appeal decisions based on “*Common Mobility Misconceptions*”.

- 11.3 It is accepted that the three tests from a judgement held by the Courts’ which, when dealing with a planning enforcement notice set out the provisions of the Caravan Sites and Development Act 1960 and the Caravan Sites Act 1968.
- 11.4 However, it is also noted that the court within *Measor v SSETR* (1999) state that whilst a caravan would not generally fall into the typical definition of a building, the judge commented that as a matter of law a structure that can be defined as a caravan under the Caravans Sites Act 1968 it does not follow that it could never be a building for the purposes of the Town and Country Planning Act 1990.

Size

- 11.5 Section 13(2) of the Caravan Sites Act 1968 sets out the if the unit is composed of “*not more than two sections separately constructed and design to be assembled on a site....*” that:

(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression “caravan” shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely—

- (a) Length (exclusive of 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)

- 11.6 In this instance, the proposed size of the single (or twin) unit mobile home as shown on the submitted elevational drawings conform with the width and length allowances, with the sectional drawing indicating that floor finished floor level to the highest ceiling level would not exceed 3 metres. It is therefore considered that the dimensions accord with the above.

Mobility

- 11.7 The mobility tests are based upon the provisions of Section 29 (Interpretation) of the Caravan Sites and Control of Development Act 1990 which defines a caravan as:

“caravan” means 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;

- 11.8 Section 13(1)(b) further provides a definition for the purposes of a twin unit caravan and states:

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

- 11.9 In this regard, the Agent has provided comment within the Planning Statement that the unit when assembled is capable of being lifted and thus placed on a low loader for transportation. However, the structural calculations provided by the Agent within the Planning Statement refer to the use of “temporary lifting beams” which indicates a degree of temporary structural means are required to lift the structure. It appears from the sketch drawings within the structural calculations that the lifting beams are not part of the overall construction of the structure but rather a base in which to rest the structure on should it need to be lifted and moved. It is unclear how the lifting beams are to be temporary in these circumstances although it does appear the term temporary and the evidence showing the beams are not a necessary structural component of the structure suggests the structure in itself is not capable of being lifted without “temporary” support. Consequently, it has not been wholly demonstrated the mobility test can be met.

Construction

- 11.10 The Agent cites within Page 6 of the Planning Statement that *“The mobile home is assembled into two distinguishable parts on site and the final act of assembly is the bolting of the two parts together.”* As noted above, the definition of the twin unit caravan states that the unit should be 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.

11.11 The LPA has no evidence to suggest that this would not be the case and therefore the construction test appears to be met for the purposes of the Caravan Sites Act 1968.

11.12 However, as the Courts have judged, a caravan may be regarded as a building for the Town and Country Planning Act 1990 and in light of the above mentioned mobility issues, further evidence would be required to demonstrate the structure is not a building for the purposes of the Town and Country Planning Act particularly in light of the substantial building operations involved to construct the two parts of the structure and the design as a permanent feature may only be moved through temporary structural support.

Material Change of Use

11.13 Notwithstanding the above, should it be demonstrated the structure is a caravan and as such a use of the land then development may occur under the definition in section 55 of the Act should the change of use be a material one.

11.14 The siting of the structure would be within the defined residential curtilage of the host dwelling Rivendell. Section 55(2)(d) does provide an exemption to the definition of development where land is used within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of that dwellinghouse. In this respect it is generally considered that primary residential uses such as creating living space cannot be incidental unless they are no short lived (e.g. additional bedroom provision) to the degree that it would be unreasonable to suggest that the use is an extension to the primary use. In this case the proposed use and design of the structure is for permanent primary accommodation and thus cannot be incidental. Section 55(2)(d) does not therefore provide an exemption to the definition of development.

11.15 Within pages 9 and 10 of the Submitted Planning Statement, the Agent refers specifically to 'Material Change of Use' and contends that relevant case law refers to four accepted 'incidental' tests which cover the following:

1. The relationship between the respective occupants
2. The relative size of the accommodation in the caravan and the house
3. The relative scale of accommodation in the caravan and the house
4. The degree to which the caravan is connected to and subordinate to the use of the dwellinghouse

11.16 Taking each point in turn, the Agent has confirmed the following (page 9 of the Planning Statement):

1. Relationship - it is proposed that the occupation of the mobile home will be for the applicant's parents
2. Size – the proposed caravan only results in a small increase in footprint and the scale is minimal, while providing necessary facilities the occupants require for a comfortable life
3. Scale – see above
4. Function – the Agent has confirmed that there will be no separate address, post box, utility meters, services such as internet, phone line and TV, parking, garden area/curtilage and access

11.17 The siting of the structure would be within a lawful residential use. Whilst the size of the ancillary structure is not determinative on its own as a material factor, in *Emin v Secretary of State for the Environment [1989]* the Court held that the scale of ancillary uses should not be simply restricted simply because of the size although the test retains an element of objective reasonableness and should not be based on the unrestrained whim of an occupier. The Courts (within *3 Harrods Ltd v Secretary of State for the Environment, Transport and the Regions [2002]*) have established that ancillary uses should be restricted to those that are ordinarily incidental or ancillary. In this instance the development results in the introduction of a substantial structure into the garden of the property. The structure provides for two bedroom living unit appears to be excessive for the ancillary accommodation of a couple and with the structure being wholly capable of operating as a single dwellinghouse, irrespective of service connections, the siting of a substantial structure introduces a use alongside the dwellinghouse which amounts to new independent living accommodation which is considered beyond a use which could ordinarily be expected at a dwellinghouse.

11.18 In support of their argument the Agent refers to *Uttlesford v SoS (Environment & White)* whereby the Courts agreed with an Inspectors view that a converted garage attached to a dwellinghouse provided independent accommodation did not amount to a material change of use. The Courts held this view on the basis that the garaged formed part of the same planning unit with the dwellinghouse and thus additional accommodation was not being a material change of use within the existing planning unit.

11.19 In this instance, the existing planning unit is the existing curtilage including the host dwelling and amenity areas. This differs from the above Uttlesford case which considered the conversion of an

existing attached garage in so far as the proposed living accommodation is physically separate from the host dwellinghouse and entirely independent in terms of its functioning capabilities.

- 11.20 In determining whether a new planning unit is being created the Courts (*Burdle v Secretary of State for the Environment [1972]*) have held functional and physical attributes are necessary factors to consider. The siting of the structure is physically separate from the host dwelling although it is noted that access to the building would be shared. However by reason of sheer scale and positioning of the structure, this is a distinct separate feature alongside and physically detached from the dwellinghouse.
- 11.21 In functional terms, the Planning Statement (page 9) clearly states that the caravan would provide ‘*necessary facilities*’ for the occupants. The level of accommodation provided would not rely on the facilities of the main dwellinghouse for its operational use and neither it is suggested that the occupants will share any part of the existing dwellinghouse.
- 11.22 Consequently, it is considered that the circumstances referred to in terms of the Uttlesford case are different to those applied for in this case. The proposed structure is capable of functioning independently from the host dwellinghouse by reason of providing comfortable and spacious living accommodation with no reliance on the living facilities at the main dwellinghouse. Moreover, the applicants state in appendix D to the Planning Statement that the intention is to allow the occupants of the structure to “*retain the independence and personal space that they need.*” It is therefore clearly envisaged the property is intended to function as a separate dwellinghouse with a degree of support one may expect where elderly parents are supported whilst living in their own home irrespective of location.
- 11.23 Based on the information provided with the application it is considered the structure is capable of functioning independently from the existing dwellinghouse and the degree of separation is sufficient to allow the structure to be occupied and use without encroaching or impeding the separate use of the existing dwellinghouse. It is therefore considered that a separate planning unit would be created to accommodate a second dwellinghouse.

12. Recommendation

- 12.1 For the reasons above it is considered that even in the event the structure is demonstrated to be a caravan, the proposed siting of the structure is not ancillary or incidental to the existing dwellinghouse by reason of the use being beyond what could be considered ancillary thus creating a new planning unit.

Decision Authorisation - Delegated Powers

Application Number: 2023/92084

Officer Recommendation: Refuse

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 building is not a building for the purposes of the Town and Country Planning Act 1990 or that the use of the land to site a structure either benefits from or does not require a grant of planning permission.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	2150.06.23D 04	Rev: 2	18 th July 2023
Proposed block plan	2150.06.23D 05	Rev: 2	18 th July 2023
Proposed floor plan	2150.06.23D 06	Rev: 2	18 th July 2023
Proposed elevations	2150.06.23D 07	Rev: 2	18 th July 2023
Proposed elevations	2150.06.23D 08	Rev: 2	18 th July 2023
Proposed section	2150.06.23D.09	Rev: 2	18 th July 2023
Planning Statement	JD/1412/JM/RM		12 th July 2023

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The application was determined on the submitted information.

Report Dated: 11th September

