

Application for Certificate of Lawful Use for the siting of a Caravan/Mobile Home for ancillary residential use in garden at 35 Mayfield Street, St Ninians, Stirling, FK7 0BZ

Statement of Evidence



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1. INTRODUCTION

- 1.1 This application is for a Certificate of Lawfulness under section 150 of the Town and Country Planning (Scotland) Act 1997) for the proposed use of land comprising part of the garden of 35 Mayfield Street, for the siting of a caravan/mobile home for ancillary residential use in the position indicated on the accompanying plan.
- 1.2 Under section 150 of the Act an application may be made to ascertain whether any proposed use of buildings or other land would be lawful.
- 1.3 S150 (2) states that for the purposes of this Act uses and 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), and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. on an application under this section,
- 1.4 Section 150 (4) says, if the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect.
- 1.5 This is not an application for planning permission and the Development Plan considerations do not fall to be considered in an application for a Certificate of Lawfulness for a proposed use or development. The current application falls to be determined having regard solely to matters of evidential fact and law, with the onus of proof on the applicant, there is no requirement for it to be publicised. Similarly, as the policies of the Development Plan (or the National Planning Policy Framework) are not relevant to the determination of an application submitted under the provisions of Section 150, any concerns regarding potential impact on the character or appearance of the area are not matters that the Council can attach any weight to. The Courts have held that the relevant test of the evidence on such matters is the balance of probability.
- 1.6 The meaning of development requiring planning permission is provided in section 26 of the Town and Country Planning (Scotland) Act 1997 (the Act) and means “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”. Section 26(2)(d) of the Act states 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’ is not to constitute development’. Whether the siting of the caravan is incidental to the use of the dwellinghouse is a question of fact and degree.
- 1.7 This Statement of Evidence will provide justification for concluding that the siting of a caravan/mobile home in the garden of the application dwelling, and for purposes ancillary to the main dwelling does not constitute operational development or a material change of use. As it is not “development” it can be carried out without planning permission.
- 1.8 In this statement, reference is made to mobile homes and caravans but for the purpose of planning law they are one and the same thing.

2 BACKGROUND

- 2.1 The application site comprises the dwellinghouse and its curtilage 35 Mayfield Street, St Ninians, Stirling, FK7 0BZ. The dwelling house and garden comprise a family home.
- 2.2 The caravan/mobile home is on the side/rear garden and is for purely ancillary residential use for the applicants' own family enjoyment. The intended occupier of the caravan/mobile home is the applicants' mother, Maureen Neal. She is recently widowed and lives alone where she is somewhat isolated from her family. Her daughter, Angela Clarke and her family, live at the application address and will provide care and assistance for Mrs Neal who will be present in the caravan/mobile home where she will live as part of the extended family and where she will also have her personal space whilst the family also maintain their own personal space. As the family are very close, the caravan/mobile home in the garden offers the space they require. Ms Clarke is able to provide care and support for Mrs Neal whilst providing her with a degree of personal space that is not currently possible within the house.
- 2.3 The siting of the caravan/mobile home is shown on the accompanying plans and in the photographs below. Its siting does not involve any construction of deep foundations, instead the caravan/mobile home sits under its own weight on height adjustable legs and feet, and it is designed with the appropriate structural integrity to allow it to be lifted and moved around the site or off the site as required. This simple placement of the mobile home which will, at some point in the future be removed, does not amount to a significant physical attachment to the land.



Site of caravan in side garden – note caravan feet visible between floor and ground

- 2.4 Plans of the caravan/mobile home also accompany this application together with details of the adjustable feet which are individually adjusted to achieve a level floor on uneven ground that are integral to the design.

3. USE FOR SITING OF A CARAVAN

3.1 Not all caravans/mobile homes take the typical form of a static or touring caravan. The definition of a caravan is provided in section 29(1) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) 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 motor vehicle so designed or adapted but does not include:

Any railway rolling stock which is for the time being on rails forming part of a railway system, or any tent.”

3.2 This definition has been modified by Section 13 (1) of the Caravan Sites Act 1968 (“The 1968 Act”), which also deals with larger twin-unit caravans. This provides that:

“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 not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled.”

3.3 With the size being updated by the Caravan Sites Act 1968 (Amendment of Definition of Caravan) (Scotland) Order 2019 to allow a maximum of 20 metres by 6.8 metres, with a maximum internal height of 3.05 metres. Section 13(2) of the 1968 Act (amended October 2006)”.

3.4 There is no requirement that a caravan must have wheels and no description as to how it should appear and from what materials it should be formed.

3.5 The separate definition of a caravan relies upon the structures’ mobility which differentiates it from a building, and it is long-established that the siting of a caravan usually involves a use of land but the possibility of a caravan also being a building cannot be entirely ruled out, however the statutory definition provides a strong indication that mobile homes of such size can be uses of land rather than operational development. The structure proposed meets the definition of a caravan and because of its impermanence and its mobility and lack of significant physical attachment to the land does not involve operational development.

4. EVIDENCE

4.1 In order for something to be considered a caravan/mobile home, it has to meet three key tests as set out in the Caravan Sites Act (CSA), these are:

- (1) Size.
- (2) Mobility.
- 3) Construction.

4.2 **Size** – Section 13(2) of the CSA sets the dimensions for a larger twin unit caravan.

Maximum CSA Requirement	Proposal
Length 20m	7.58m
Width 6.8m	5.4m
Internal Height 3.05m	2.085m (internal) (2.5m (external))

4.3 The proposal is therefore comfortably below the maximum permitted dimensions.

4.4 **Mobility** – Section 13(1) (a) of the CSA 1968 indicates that a caravan is a structure which, “when assembled, [is] 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)”.

4.5 Services are linked to the caravan/mobile home, but these services can be disconnected easily and within minutes so, in the absence of any significant connection to the ground, if necessary, the structure can be lifted without structural damage. It has a steel chassis, is constructed with very robust materials (powder-coated steel sections bolted together) and the manufacturer has experience of moving these structures by crane. The photograph above shows the caravan above the ground on legs and the method of moving the caravan once fully assembled, is attached to this application (Method Statement for Lifting Structure).

4.6 In the case of *Carter and another v Secretary of State for the Environment and another* [1994] 2 EGLR 194, the Court of Appeal held that for the caravan to meet the mobility test the structure as a whole must be capable of being moved by being towed or transported on a single motor vehicle or trailer. The caravan definition is clear that the fact a caravan may not lawfully be moved on a highway when assembled (because of its size or road standard limitations) does not mean it ceases to be a caravan. The fact that a site may be constrained, for example by fences or the presence of nearby trees, similarly does not mean that the structure ceases to be a caravan. The definition of a caravan requires only that “it is, when assembled, physically capable of being moved by road from one place to another”. The Romford appeal case attached at Appendix 1 is clear at paragraph 13 “a lack of intention to move is not relevant, nor is the absence of a suitable means of access or an adequate road network, but the mobile home should possess the necessary structural qualities to permit its movement in one piece without structural damage”.

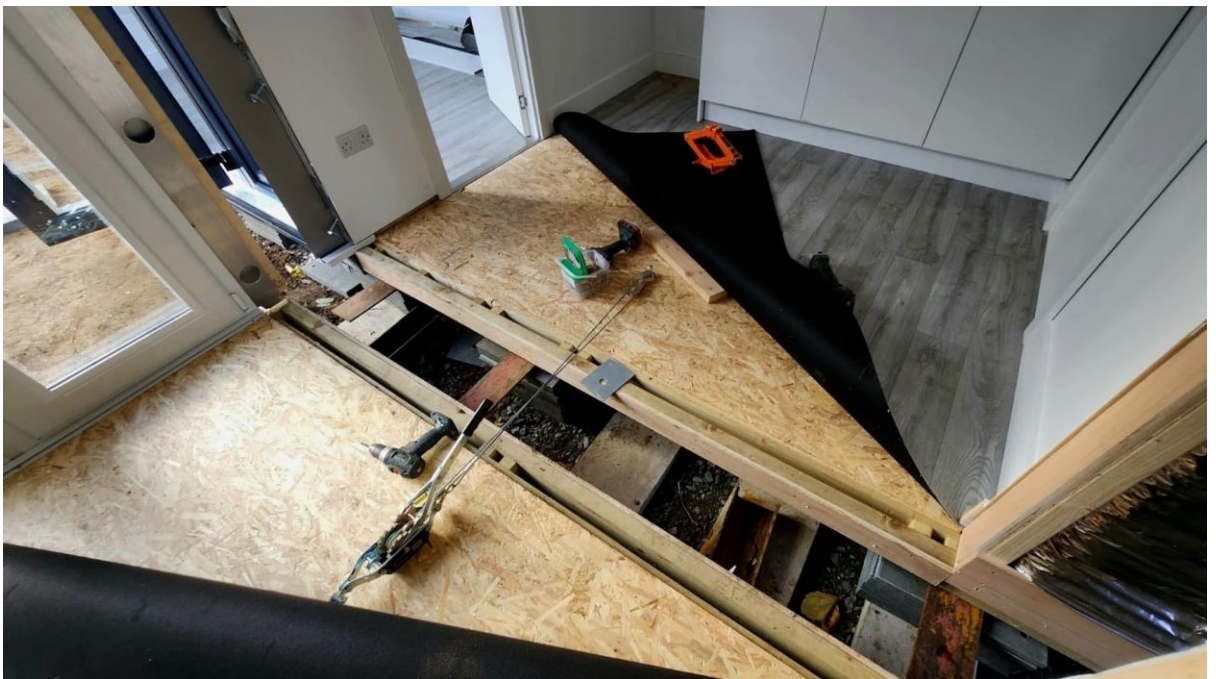
4.7 The proposed caravan does possess the necessary structural qualities to permit its movement in one piece, the evidence accompanying this application and the common experience and practice of the company demonstrates that it is designed to be transportable once fully assembled. The caravan is mobile and there is in fact a thriving second-hand market for these structures which because of their robust and durable construction and 25-year external maintenance guarantee are often moved between homes or re-sold if no longer needed. The manufacturer offers a ‘second hand’ service, where it connects new customers with those who no longer need the caravans. It will move the caravans and relocate them to other

locations, and it also offers a rental service, where the caravans are rented for a period when needed and are then removed when no longer needed.

- 4.8 It must be capable of being moved, but it does not cease to be a caravan just because it is not moved or because its movement or relocation is challenging. Nonetheless this caravan/mobile home is not intended to be a permanent addition to the land, it could be moved around, and it can be readily removed once family circumstances change, and it is no longer needed. The caravan/mobile home meets the second key test of the CSA.
- 4.9 **Construction** – The structure must be designed for human habitation. In the case of a larger caravan Section 13(1)(a) of the CSA 1968 says a twin-unit caravan is a structure designed or adapted for human habitation which—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... and 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).
- 4.10 The evidence accompanying the application shows a caravan/mobile home floor plan showing the facilities necessary to make it habitable. The manufacturer’s caravans are built to individual customer requirements and so have slightly different internal configurations but have all the facilities one would expect in a caravan designed for human habitation.
- 4.11 The proposal is prefabricated within the factory and then assembled on site over a very short period of time. Whilst it is common for many mobile homes to be delivered as a complete unit or as two halves that are then joined together on site, case law has established that there is no requirement that the process of creating the caravan must even take place away from site. In *Byrne v SSE and Arun DC QED 1997* concerning a larger twin unit mobile home, it was found that: “Though the Park Home was delivered by lorry in many pieces, I see no requirement in section 13(1)(a) that the process of creating two separate sections must take place away from the site on which they are joined together. It is necessary only that the act of joining the two sections together should be the final act of assembly”. In the West Devon Borough Council appeal case (Ref: APP/Q1153/C/08/2064995) attached at Appendix 1A the Inspector held that it was only necessary that, in the case of larger mobile homes, the act of joining the two sections together should be the final act of assembly. The same conclusion was reached in connection with the London Borough of Romford Case (Ref: APP/B5480/C/17/3174314) attached at Appendix 1.
- 4.12 The caravan at 35 Mayfield Street arrived on site in pre-formed pieces with the final act of assembly comprising the joining of two halves by bolts as illustrated in the photographs below.



Two parts of caravan ready to be joined together.



Note ratchet pulley to pull halves together and line of bolts in vertical plane awaiting tightening



Bolts connecting two halves with access panel for tightening

4.13 The photographs below show the same model caravan/mobile home being joined by lifting and rolling the parts together.



First part in place, note shallow padstones in place in readiness for second part.



Second part of caravan within steel cradle before joining to first part



Second half being lifted into place on supporting cradle



Second half in place after it is aligned and pulled together and joined.

4.14 The caravan/mobile home at 35 Mayfield Street can be lifted whole when fully assembled and moved within the adjustable steel cradle shown in use in the photographs above. The caravan/mobile home is therefore designed for human habitation, it is constructed in a Statement of evidence, 35 Mayfield Street, St Ninian's, Stirling
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manner which when finished is capable of being moved, and thus meets the third key test of the CSA.

- 4.15 The accompanying caravan lifting method statement shows how the entire range of the manufacturers' caravans are capable of being lifted and moved. It is fully portable; the use of a lifting cradle ensures that the structure is not damaged in the process.

5. USE

- 5.1 A caravan/mobile home which because of its mobility is not operational development may be sited within the curtilage of a dwelling without planning permission if its use is ancillary to the use of the dwelling. This would apply even if it had all facilities within it that enabled the occupier to live independently. Section 26(2)(d) of the Act states 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' is not to constitute development. What defines an incidental/ancillary use is a matter of fact and degree, however to assist, Uttlesford District Council v Secretary of State for the Environment & White [1991] remains one of the leading cases in respect of the use of an existing building within the curtilage of a dwellinghouse, for the provision of ancillary residential accommodation, Mr Lionel Read QC (sitting as a deputy judge of the Queen's Bench Division) concluded that a building within the garden of a property could be used as an integral part of the main residential use, without this representing a breach of planning control (i.e., a material change of use). As he noted in his judgement:

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

- 5.2 Examples of this in connection with caravans include the attached Edinburgh appeal case (paragraphs 6 and 7 – appeal reference: CLUD-230-2015). Also the East Hertfordshire appeal case (Ref: APP/J1915/X/11/2159970) where the inspector determined that a fully equipped mobile home occupied by the elderly parents of the applicants was lawful, and in Esher a mobile home to provide ancillary staff accommodation but with all the facilities of an independent home, was also found not to require planning permission (Appeal decision APP/K3605/X/12/2181651). A similar decision was reached by a planning Inspector in Teddington in 2016 (APP/L5810/X/15/3140569). More recently an enforcement appeal decision in Welwyn and Hatfield District confirmed a caravan with all facilities of an independent home sited within the curtilage of a dwelling house and occupied by the nephew of the owners was lawful (Appeal Decision APP/C1950/X/20/3247983) and at Heathfield House, West End Road, Tiptree CO5 0QH (APP/A1530/X/17/3177321) which acknowledges that "typically, a caravan will be equipped with all the facilities required for independent day-to-day living. It does not follow automatically that once occupied there must be a material change of use simply because primary living accommodation is involved. Much depends on how the caravan would actually be used." All decisions are attached at Appendices City of Edinburgh, 1B, 1C, 1D, 1E and 1F.

5.3 The general approach of the Courts is that it is the actual use of a caravan/mobile home that is the determining issue, rather than its potential to be occupied as a self-contained residential unit for whilst there is no statutory planning definition of ancillary/incidental, there are a number of broadly accepted ‘incidental’ tests as arising from relevant case law.

These are:

1) **The relationship between the respective occupants** – in this case there is an immediate family connection between the prospective occupier of the caravan/mobile home and the occupiers of the dwelling. The occupier is the mother of the house occupiers/owners. The family is close and provide support for one another. The occupier of the caravan/mobile home needs to be close to her family enabling daily interaction, facilitating a sharing in day-to-day tasks and with care for each other, doing their best to make each of their lives more comfortable. The house is small and additional space at the home and particularly a degree of private space is required to achieve this.

2) **The relative size of the house, its garden and the caravan** – the proposed caravan/mobile home is modest in scale and significantly smaller than is permitted under the CSA and is smaller than many of the appeal examples cited above. The garden will be shared between all occupiers.

3) **The relative scale of accommodation in the caravan/mobile home and the house** – the accommodation within the proposed caravan/mobile home is the minimum needed to provide for the family’s needs. There will however continue to be a sharing of facilities within the dwelling house such as laundry and kitchen facilities.

4) **The degree to which the caravan/mobile home is functionally connected to and subordinate to the use of the dwelling house** – the caravan/mobile home is clearly subordinate to the use of the dwelling and curtilage and does not create a new planning unit. There is absolutely no intention that the caravan will be made available for separate, independent, residential use. It will share the services of the main house, the same postal address, the garden and wider curtilage and is to be used only by members of the same family who each have access to both the caravan/mobile home and the dwelling, sharing the garden, sharing day-to-day living facilities, sharing expenses and interacting with each other throughout the day and evenings whilst also socialising with and caring for one another. Whilst the proposed mobile home/caravan does have limited space for cooking there is not a full-size kitchen and many domestic tasks such as laundry and cooking will generally continue to be carried out within the house. Reference to the appeal decision at Welwyn Hatfield District (Appendix 1E) acknowledged that the applicant’s nephew spent “most of his time in the caravan but remains close to and relies upon the members of the family”. The same scenario is proposed at 35 Mayfield Street. There will not be any physical or functional separation of the garden land and there is no intention to make the caravan available as a separate dwelling. The house and its garden will remain in use as a single dwellinghouse by a single family and the character of the usage will not change. The proposal will not result in creation of a new planning unit.

5.5 The application must be assessed on the basis of the stated ancillary use. Whilst the caravan/mobile home might therefore be seen as being capable of independent occupation, this is not the basis upon which a Certificate is being sought. There will be no physical or

functional separation of land, and no separate planning unit will be created. Provided it is occupied as ancillary to the occupation of the dwellinghouse in the manner described it should be clear that no material change of use will occur. These issues are addressed in clear terms in the appeal decision at Buckingham Road, Bletchley, Milton Keynes (ref: APP/Y0435/X/15/3129568 attached at Appendix 1G). In this decision the appointed Inspector noted that whilst the proposed caravan would have contained all the facilities for independent living it would not have been used in that way. There would have been a functional link with the main dwelling. The use of the caravan in the manner described in the application would have been a use comprised part and parcel within the primary dwellinghouse use which was already taking place within the planning unit, as a matter of fact and degree. For this (and other) reasons it was found that, had the caravan been sited and its use instigated at the time of the LDC application, there would not have been a breach of planning control. The siting and use of the caravan for the purpose of providing additional living accommodation as described in the application would have been lawful as a matter of fact and degree.

6. CONCLUSION

- 6.1 By any reasonable interpretation the proposal falls within the definition of a caravan as stated in the 1960 and 1968 Acts and given its very limited connection to the land and the absence of any foundation its siting within the curtilage of 35 Mayfield Street is not operational development. Its partial assembly on site is not a factor in determining whether it meets the definition of a caravan because once fully assembled it will remain a movable structure and will not be permanently affixed to the ground.
- 6.2 It will be used for purposes that are ancillary to the use of and occupation of the main dwelling. It uses the main dwellings' services, the same address, the same utilities and there will be no division of the plot and most importantly, it will be occupied only by a family member. The planning unit will remain as one. There will therefore be no independent use and no new planning unit and so there is no material change of use requiring planning permission as it does not bring about a material change of use of the land.
- 6.3 Based on this information the caravan simply provides additional accommodation for use by one family. It is not permanent and will be removed when it is no longer needed. This is consistent with and indeed part of the primary residential dwelling house use.
- 6.4 For the reasons explained above, and the case law and appeal precedents put forward, it is considered the correct application of planning law and judgement of the particular circumstances of this case on the basis of fact and degree, should result in the granting of a Certificate of Lawfulness for siting of the caravan/mobile home generally as described and shown on the submitted plans for purposes ancillary to the occupation of 35 Mayfield Street.

APPENDICES

Appendix City of Edinburgh Council appeal case (appeal reference: CLUD-230-2015)

Appendix 1 London Borough of Havering appeal case (Ref: APP/B5480/C/17/3174314)

Appendix 1A West Devon Borough Council appeal case (Ref: APP/Q1153/C/08/2064995)

Appendix 1B East Hertfordshire appeal case (Ref: APP/J1915/X/11/2159970)

Appendix 1C Esher appeal case (Appeal decision APP/K3605/X/12/2181651)

Appendix 1D Teddington appeal case (Appeal decision APP/L5810/X/15/3140569)

Appendix 1E Welwyn and Hatfield case (Appeal decision APP/C1950/X/20/3247983)

Appendix 1F Colchester Borough Council (Appeal decision APP/A1530/X/17/3177321)

Appendix 1G Milton Keynes Council (Appeal decision APP/Y0435/X/15/3129568)

Method Statement for moving fully assembled structure.

Forms of Caravan feet