

SUPPORTING PLANNING STATEMENT

APPLICATION FOR A LAWFUL DEVELOPMENT
CERTIFICATE FOR A PROPOSED USE/DEVELOPMENT

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 192 AS AMENDED BY
SECTION 10 OF THE PLANNING AND COMPENSATION ACT 1991

TOWN AND COUNTRY PLANNING (GENERAL MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015

A CERTIFICATE IS SOUGHT FOR THE SITING OF A CARAVAN, TO BE USED
FOR RESIDENTIAL OCCUPATION, ANCILLARY TO THE RESIDENTIAL USE
OF ORCHARD COTTAGE, NEW DROVE, WISBECH ST MARY

CAMBRIDGESHIRE. PE13 4UA

LANDMARK ASSOCIATES
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VERSION 1.0

SUPPORTING PLANNING STATEMENT

1.0 INTRODUCTION

- 1.1 One of the exceptions to the rule that the stationing of a caravan on land is a change of use is when that caravan provides ancillary residential accommodation and the planning unit is a residential use.
- 1.2 The planning history of Kerkira in relation to caravans shows that there have been two previous planning applications. Both of these applications were approved. As a result, there has been a caravan stationed on the land for 35 years. A family member has always occupied the caravan as ancillary residential accommodation. There has not been a change of use of the land involved based on these activities.
- 1.3 It is submitted, that in the circumstance the planning applications and approvals were unnecessary and that the correct approach to deal with the stationing of a caravan on the land should have been an application for a Certificate of Lawful Use.
- 1.4 This application, for a Certificate of Lawful Use, is submitted to the Council, as the Local Planning Authority, under the provisions of Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991). This states that if any person wishes to ascertain whether:

“(a) any existing use of buildings or other land is lawful;

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

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

they may make an application for the purpose to the Local Planning Authority specifying the land and describing the use, operations or other matter. If, on an application under this section, the Planning Authority are provided with information satisfying them that the use or operations described in the application would have been lawful when instituted, or begun at the time of the application, they should issue a Lawful Development Certificate to that effect. “

- 1.5 This application seeks a formal decision from South Norfolk Council concerning the stationing of a caravan, for ancillary residential use, within the planning unit known as Kerkira, Stocks Hill, Bawburgh, Norfolk NR9 3LL
- 1.6 This application is slightly different from the ‘norm’ in that the Lawful Development Certificate is sought for the stationing of a caravan for ancillary accommodation,

which has been on-site and has been in continual use since 1987. The stationing of a caravan on the site has been granted planning permission on two previous occasions in 1987 and 2009. It is argued that by these grants of consent the Council has established the principle of stationing a caravan on the site. Although planning permission has been granted on two occasions, it is submitted that the correct approach should have been an application for a Certificate of Lawful Use. It will be argued that the property will remain, as a single residential planning unit and the stationing of a caravan for ancillary residential use will not result in the formation of another residential planning unit.

- 1.7 It has been established as a general planning principle by Local Planning Authorities and in similar circumstances, by the Council that the stationing of a caravan on land as ancillary residential accommodation which is incidental and subordinate to the residential occupation of the main dwelling does not represent a change of use of the land and as a result, does not constitute development.
- 1.8 This approach is similar to the approach adopted by other Local Planning Authorities and is one that is also supported by appeal decisions by planning inspectors and the courts. This application seeks to 'formalise' the situation in relation to Kerkira. It is submitted that to continue the stationing of a caravan on the land, which forms the residential planning unit, would be lawful having regard to the relevant provisions of the 1990 Town and Country Planning Act.
- 1.9 There is an on-going need for a caravan on the site to provide support to members of the family.
- 1.10 It is stressed, that the caravan will be only used for accommodating family members and it is not intended that it should be occupied as an independent unit of residential accommodation. The individuals concerned will all live as an extended family unit.
- 1.11 As stated above this is an application for a Certificate of Lawfulness for a proposed use or development under section 192 of the Town and Country Planning Act 1990 (as amended) to station a mobile home (caravan) within the planning unit of a dwelling.
- 1.12 The meaning of development requiring planning permission is provided in section 55 of the Town and Country Planning Act 1990 (the Act) and comprises two main elements;
 - 1) *Operational Development being "the carrying out of building, engineering, mining or other operation on, on, over or under land"*
 - 2) *"The making of any material change of use of any buildings or other land"*
- 1.13 This Statement will justify why the continued siting of a mobile home for purposes ancillary to the main dwelling does not constitute operational development or a material change of use as per section 55 of the Act and therefore does not require planning permission.

- 1.14 For the purpose of planning law, the reference to mobile homes and caravans are interchangeable as they are the same thing.

2.0 APPLICATION SITE

- 2.1 The property Kerkira is located within a cluster of dwellings on the north-eastern side of Stocks Hill, Bawburgh, Norfolk, NR9 3LL to the south of the village. It is served by the main road linking Watton Road to the village. The area of land forming the resident planning unit is roughly 'triangular' and surrounded to the east, west and south by agricultural land to the north by residences. The application site comprising Kerkira and its garden are shown outlined in red on the submitted location plan. The site contains the main dwelling house, a caravan used as ancillary residential accommodation and a private workshop.
- 2.2 The area immediately around the property is used as a formal garden, which with the dwelling, caravan and workshop form a single residential planning unit. The garden area is set to lawns and shrubs. There is no sub-division of the garden.
- 2.3 The site is not located in a Conservation Area or within the setting of any heritage asset.
- 2.4 There is no Public Right of Way passing through the site or adjacent to the site.
- 2.5 The planning history concerning the stationing of caravans on the site is a material consideration in the determination of this application for a Certificate of Lawful Use.
- 2.6 In 1987 a planning application for a "Mobile Home to Garden Site" was approved by the Council (ref 1987/3140 the details of the application are not available online). Mr Hipperson's father occupied the caravan.
- 2.7 Twelve years later in 2009, a second application was made (ref 2009/1280/H) for the "Placing of a Mobile Home on an existing mobile home pad within the grounds of Kerkira. The application was approved subject to three conditions. Mr and Mrs Hipperson's daughter occupied the caravan and as a result, the requirement that the caravan should be occupied as ancillary accommodation was satisfied. It is understood that the application was made as the original caravan on the site had become dated and the family wished it to be replaced with a modern model. In reality, a 'like for like swap' could have taken place.
- 2.8 There has been a caravan on the site for 35 years. The result of these two planning permissions is the establishment of the principle of a caravan on the site for ancillary residential accommodation.
- 2.9 It is not possible to determine the planning advice given to Mr Hipperson in 1987. It is submitted that a planning application was unnecessary and that the correct approach would have been a Certificate of Lawful Use. In theory, the application in 2009 was also unnecessary as Mr Hipperson was simply replacing one caravan with

another. This should not have needed an application unless there was a restrictive condition on the 1987 approval.

- 2.10 Given the planning history of the site, it is considered that a Certificate of lawful Use is the most appropriate approach to dealing with the situation.

3.0 SUPPORTING STATEMENT AND EVIDENCE

- 3.1 The application for the Lawful Development Certificate is required to be determined having regard solely to matters of evidential fact and law. The onus of proof is on the applicant and there is no requirement for it to be publicised under the provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 3.2 In relation to an application for a Lawful Development Certificate, the policies of the Development Plan (or the National Planning Policy Framework) do not apply to the determination of an application submitted under the provisions of Section 191. If the Council has any concerns regarding the potential impact on the character or appearance of the area then these are not applicable and are not matters to which the Council can attach any weight.
- 3.3 In the approach concerning matters where the onus of proof is on the appellant, the Courts have held that the relevant test of the evidence is the balance of probability. In addition, the applicant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority has no evidence to contradict or otherwise make the applicant's version of events less than probable, this is not in itself a valid reason to refuse the application.
- 3.4 Planning permission can only be required where development takes place, and development is defined in Section 55(1) of the Town and Country Planning Act 1990 as being:
- "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."*
- 3.5 This definition has two 'legs'; one involving permanent physical alterations to land, and the other material changes of use of buildings or land.
- 3.6 A caravan is by definition a "structure", yet it is settled law that stationing a caravan on land is a use of the land rather than operational development, this principle is embedded in the legislative framework, endorsed by the case law and routinely applied by the Planning Inspectorate. This is because a caravan is regarded as an article of movable personal property known as a 'chattel' and there is no public law preventing one from being kept in someone's garden.

- 3.7 The caravan that is stationed on the land the subject of this application complies with the statutory definition of a caravan in every respect. As a result, no operational development as defined by Section 55(1) will take place.
- 3.8 For there not to be a material change of use, the mobile home must be ancillary/incidental to the C3 Residential Use. Whilst there is no statutory planning definition of ancillary/incidental, there are 4 accepted 'incidental' tests, reported to the House of Commons (Hansard, for 22 November 2005) as arising from relevant case law. These are:
- 1) The relationship between the respective occupants;
 - 2) The relative size of the house, its garden and the caravan;
 - 3) The relative scale of accommodation in the caravan and the house;
 - 4) The degree to which the caravan is functionally connected to and subordinate to the use of the dwelling house.
- 3.9 Relationship – members of the applicant's family or the applicants will use the mobile home. In the latter case, a family member will occupy the dwelling.
- 3.10 Size/Scale of Accommodation – The proposed caravan only results in a small increase in the footprint of the property. The scale of the accommodation within the caravan is minimal while providing the necessary facilities the occupant requires for a comfortable life.
- 3.11 Function – 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.
- 3.12 It is intended that the occupants will be regularly preparing and eating meals in the main dwelling, watching television/relaxing, socialising with the family and using existing household facilities.
- 3.13 To confirm there will be no separate;
- Postal address,
 - Post Box
 - Utility meters,
 - Parking,
 - Garden area or curtilage, and
 - Access.

- 3.14 The occupant of the mobile home will be of the same family, so there will be a clear interchange of use between the main dwelling and the caravan.
- 3.15 Notwithstanding the above, the application must be assessed based on the stated purpose and not what might potentially occur. An LDC can only certify the use applied for. If the caravan is not used in association with the dwelling, as described, and the functional link is severed, then it would not benefit from the LDC.
- 3.16 Having regard to the above, the questions to be asked when deciding whether to issue a Certificate of Lawful Use will be:
- a) Is the 'unit' a caravan as defined in the Caravan Sites and Control of Development Act 1960 (as amended)?*
 - b) Is the caravan sited within a defined residential planning unit? and*
 - c) Will the caravan be used solely for purposes ancillary to the use of that defined planning unit?*
- 3.17 Each of these questions needs to be answered in the affirmative in order for a Certificate to be issued.

IS THE UNIT A CARAVAN

- 3.18 Section 29 (1) of the Caravan Sites and Control of Development Act 1960 ("The 1960 Act") defines a caravan 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."*

- 3.19 This definition was modified by Section 13(1) of the Caravan Sites Act 1968 ("The 1968 Act"), which deals with twin-unit caravans. Section 13 (1) permits within the definition:

"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."

- 3.20 For something to be considered a caravan/mobile home it has to meet three key tests as set out in the CSA, these are size; mobility; and construction.
- 3.21 In the next section of this report, the proposed mobile home will be assessed against the above three tests.

Size

- 3.22 Section 13(2) of the 1968 Act further prescribes the following maximum dimensions for twin-unit caravans:
- a) length (exclusive of any drawbar); 60 feet (18.288 metres);*
 - b) width: 20 feet (6.096 metres);*
 - c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10 feet (3.048 metres).*
- 3.23 The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006 has now amended Section 13(2) of the 1968 Act to increase the maximum dimensions of a caravan to:
- 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).*
- 3.24 The caravan will comply in all aspects with the required size restraints. It is not necessary for a specific caravan to form part of the application and the certificate can apply to any caravan provided it passed the three 'tests'.

Mobility

- 3.25 Section 13(1) (a) of the Caravan Sites Act 1968 indicates that a caravan is a structure that, "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)".
- 3.26 The caravan will be delivered by road from the factory in two sections and lifted onto the site by a mobile crane before being bolted together. As a result, the mobility test is satisfied.

Construction

- 3.27 Section 13(1) (a) of the Caravan Sites Act 1968 Twin-unit caravans... (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.
- 3.28 The mobile home is assembled into two distinguishable parts at the factory and the final act of assembly is the bolting of the two parts together. Given the method of construction, the construction test is passed.
- 3.29 The proposed caravan will meet the size test, the mobility test, and the construction test (a methodology which has been accepted at appeal and High Court) It is submitted that the information provided shows that the proposal meets the three tests as set out in section 13 of the Caravan Sites Act 1968, and as amended in October 2006 and should be considered a caravan.
- 3.30 As such, the proposal does not constitute operational development.

4.0 THE PLANNING UNIT

- 4.1 The planning unit within which the proposed caravan is to be stationed comprises Kerkira and its residential garden as outlined in red on the submitted plan.
- 4.2 The leading case of *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240 sets the test for determining the extent of the planning unit. Three broad categories of the planning unit were identified by Bridge J, who stated:

*"First, 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. That proposition emerges clearly from **G Percy Trentham Ltd v Gloucestershire County Council** [1966] 1 WLR 506, where Diplock LJ said, at p 513:*

"What is the unit which the local authority are entitled to look at and deal with in an enforcement notice for the purpose of determining whether or not there has been a 'material change in the use of any buildings or other land'? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose."

However, 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."

4.3 On-site and by looking at aerial photographs, it is evident that the garden and dwelling as contained within the 'red line' constitute a single residential planning unit. The area constitutes a single planning unit comprising a house and garden and constitutes a single planning use.

5.0 THE USE OF THE CARAVAN AS ANCILLARY ACCOMMODATION

5.1 In relation to the proposed use of the land, the property Kerkira and its associated gardens will be occupied by the daughter and granddaughter of Mr and Mrs Hipperson. Mr and Mrs Hipperson will occupy the caravan.

5.2 The on-going need to station a mobile home (caravan) on the land has arisen from the specific family circumstance. While the caravan has facilities for independent living, Mr and Mrs Hipperson will live as an extended family with their daughter and granddaughter in terms of main meals and support over a wide range of domestic activities such as cleaning and laundry.

5.3 There is no intention that the caravan will be made available for separate, independent, residential use. The caravan will provide a unit of accommodation ancillary to the main use of the dwelling. It will not be a unit of accommodation in its own right, as independent persons will not occupy it.

5.4 Water, electricity and telephone are to be supplied from the main house and will not be separately metered.

5.5 Existing foul drainage goes to the main sewer and this will continue. There is no increase in the volume of foul water entering the system.

5.6 The caravan will not have a postal address.

5.7 The caravan will not be registered as a separate unit of occupation, with respect to the payment of Council Tax.

5.8 There will be at all times a functional link with the main dwelling. The provision of meals will be shared, as will laundry facilities, storage of domestic items, housekeeping etc.

5.9 Whilst the caravan might 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 a separate residential planning unit will not be created. Appeal decisions conclusively demonstrate that the siting of a caravan, to be used for ancillary purposes, is not to be regarded as operational development, and does not bring about a material change of use of the land. Whether or not the

caravan is capable of independent occupation is of no relevance; the assessment of whether development is involved can only be made based on how the caravan in question will be used.

- 5.10 On the basis that at all times the occupation of the caravan will remain ancillary to the primary use of the land, no material change of use of land requiring planning permission will take place.
- 5.11 At appeal, Planning Inspectors have repeatedly stressed that it is how the caravan is used which is relevant and not the physical nature of the accommodation contained in it. It would be possible to illustrate the approach adopted in this statement by providing several planning appeals, which have supported the contentions above. However, in the circumstances and the light of previous decisions of the Council, this is not considered necessary.
- 5.12 However, it is stressed that appeal decisions do demonstrate that the siting of a caravan, to be used for ancillary purposes, is not to be regarded as operational development, and does not bring about a material change of use of the land. Whether or not the caravan is capable of independent occupation is of no relevance; the assessment of whether development is involved can only be made based on how the caravan in question will be used.

6.0 CONCLUSION

- 6.1 To summarise, the key elements of the current submission are as follows:
- The accommodation to be provided will be within a caravan as defined in the 1960 Caravan Sites Act (as amended);
 - The caravan will be sited within the planning unit of the existing dwelling;
 - It will when sited, and will thereafter remain, a movable structure;
 - The caravan will not permanently be affixed to the ground and as a result, no operational development will take place; only utility services will be connected;
 - The use of the caravan will at all times be ancillary accommodation incidental and subordinate to the residential occupation of the residential planning unit that is Kerkira;
 - The occupiers of the caravan, will have a close family link with the occupiers of the main dwelling, and the provision of main meals, laundry facilities, etc. will be shared with the main dwelling;
 - The caravan will not be provided with its own separate planning unit; and

- The caravan will not have a separate postal address, it will share the existing dwelling's utility services, and it will not be registered as a separate unit of occupation with respect to the payment of Council Tax.

6.2 For these reasons, and having regard to the submitted evidence, it is clear that there will be no material change in the use of the planning unit, and thus no development as defined by Section 55(1) of the Town and Country Planning Act 1990 will take place. A Certificate of Lawfulness of Proposed Use or Development, under the provisions of Section 191 of the 1990 Act, should be issued.