

## Appeal Decision

Site visit made on 13 March 2017

by **Diane Fleming BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 April 2017

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**Appeal Ref: APP/Q1445/X/16/3162334**

**14 Mill Lane, Portslade, Brighton, Sussex BN41 2DE**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr David Manser against the decision of Brighton & Hove City Council.
  - The application, Ref BH2016/01923, dated 25 May 2016, was refused by notice dated 19 October 2016.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is described as 'Proposal to site twin unit mobile home in the rear garden at 14 Mill Lane, Portslade, Brighton BN41 2DE (size of proposed mobile home 6600mm x 13600mm)'.
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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

### Procedural Matters

2. The appellant advises that he misquoted the post code as being BN41 2PJ for the property when completing the appeal form and that it should be BN41 2DE. In all the other documentation submitted by him and the Council it is correctly referenced and I have therefore taken this correction on board in reaching my decision.
3. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of Section 192(2) of the 1990 Act to the appeal proposal, the Council has determined the application having regard to section 55 of the 1990 Act.

### Reasons

4. The appeal relates to a detached dwelling with a long rear garden. The application is for the siting of a 'twin unit' mobile home within the garden which the appellant states would come within the definition of a caravan in terms of its size, construction and mobility. It is to be used solely for guests, visiting
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family members and for hobby space; purposes the appellant describes as being incidental to the dwelling.

5. It is the appellant's responsibility to provide sufficient factual information to describe precisely what is being applied for.<sup>1</sup> In this case, the appellant provided a drawing and a statement to support his submission. The drawing showed each elevation of the proposed mobile unit and the statement gave dimensions to demonstrate that it would not exceed the size limitations stated in the statutory definition of a caravan given within the relevant legislation<sup>2</sup>. The documents also show that the construction of the mobile unit would be from two separate units split down the middle with the final act of assembly being their bolting together on site. The appellant's mobile unit would be 13.6m x 6.6m in area and 2.98m high and I note the Council do not dispute these measurements. I find that the dimensions of the proposed unit would therefore not exceed the size limitations set out in Part 1 of the CSCDA 1960<sup>3</sup>. The construction of the mobile unit would also satisfy the definition of a caravan.
6. With regard to the mobility test the CSCDA 1960 defines '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 other motor vehicle so designed or adapted. The Council submit that once the mobile unit is erected that it could not be moved as it would have foundations dug into the earth and brick supporting walls underneath the structure. However, the appellant states that the mobile unit would be a self-supporting unit and that it would only 'sit on a raised brick plinth'. It is the plinth that would have a 'shallow mass concrete strip foundation below'. As such, the mobile unit would not be fixed to the ground so that it became a building and would therefore remain mobile.
7. The Council also contend that it has not been demonstrated with a structural specification that the mobile unit could be moved in 'one piece'. The appellant refers to a number of cases which deal with the 'mobility' test<sup>4</sup> to support his statement that the mobile unit conforms to the definition of a caravan. The Council make no comment on any of this case law. In *Carter* the decision was that a 'Park Home' was not a caravan as it could only be moved once its four prefabricated sections were dismantled. In *Byrne* a log cabin failed the mobility test as lifting it would have resulted in structural damage. In *Brightlingsea* the test was whether the structure was capable of being towed or carried on a road.
8. It seems to me that the appellant on this point has complied with the guidance in the PPG to provide sufficient factual information to describe precisely what is being applied for. He has described his proposal with clarity and precision so that it is understood exactly what is involved. In addition, he has stated that the structure of the mobile unit would possess the necessary qualities to enable it to be moved by road in one complete section.
9. Other matters such as the external appearance of the mobile unit and the period of time it would be in situ do not form part of the assessment

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<sup>1</sup> Planning Practice Guidance ID: 17c-005-20140306 (PPG)

<sup>2</sup> Caravan Sites and Control of Development Act 1960 (CSCDA) & Caravan Sites Act 1968 (CSA)

<sup>3</sup> Length 20m, width 6.8m and overall height of living accommodation 3.05m

<sup>4</sup> *Byrne v SSE & Arun DC* [1998] JPL 122, *Carter v SSE* [1995] JPL 311 (COA) and *Brightlingsea Haven Limited & Anor v Morris & Ors* [2008] EWHC 1928 (QB)

- requirements to determine whether a structure is a caravan or not. Notwithstanding the Council's detailed submissions on these points, I consider that the appellant's mobile unit would meet the statutory definition on the basis of all the information provided. If development is carried out not in accordance with the details submitted with the application then it is open to the Council to take further action.
10. Both parties also refer to the use of the mobile unit which I now assess. There are some instances where the stationing of a mobile unit will not involve development. Under section 55(2)(d) of the 1990 Act, use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such, does not involve development for the purposes of the Act. The issue to be determined here is whether the mobile unit would be used for a purpose incidental to the enjoyment of the dwelling house.
  11. The Council do not dispute that the property at the appeal site is used as a single dwelling house and that it benefits from permitted development rights as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015.
  12. From the appellant's description and the information shown on the drawing the mobile unit would possess all the essential facilities for separate day-to-day living. The inside of the unit would be laid out with two bedrooms, two bathrooms and a living area within which there would be, as described by the appellant, a kitchenette. As a result the Council take the view that the mobile unit would have the potential to function as a separate unit of accommodation and would represent the introduction of a new planning unit. However, this in itself is not conclusive as it is necessary to examine how the accommodation in the mobile unit would be used and occupied.
  13. There are a number of accepted tests<sup>5</sup> when dealing with the consideration of planning units. The point at issue in this case is whether the siting of a mobile unit within the rear garden would result in two dwelling houses rather than one. A key consideration is whether physically and functionally separate areas would be created which would amount to two separate planning units.
  14. With regard to the physical relationship of the mobile unit, it would be sited in the rear garden of the host property and the drawing shows that this would not be subdivided with a fence or any other form of division to create a separate garden area. With regard to access, there is a garden gate positioned between the detached garage situated in the rear garden and the corner of the host property. This enables access to the rear garden from the garage forecourt. As this would not be separated in any way from the rest of the garden, the mobile unit would therefore be under the control of the appellant. Notwithstanding the provision of a separate soakaway and the facilities within the unit, there would still be a physical relationship with the host property as gas, electricity and water supplies would be taken from it.
  15. With regard to how the mobile unit would function, the host property is a detached dwelling with three bedrooms, two reception rooms, a conservatory, kitchen and bathroom. The footprint of the mobile unit would be 80 sq m which would exceed the footprint of the host dwelling by 6 sq m. However, the

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<sup>5</sup> Burdle v SSE [1972] 1 WLR 1207

host property is a two storey structure which the appellant states would be used by the parent(s) and sibling of the appellant's partner for day to day living other than for sleeping and bathing purposes. These activities would be carried out in the mobile unit. The appellant's partner's family would take main meals, wash clothes and store food in the host property. In addition, no rent would be paid for the use of the mobile unit and family members would share the cost of utility supplies. Following their vacation of the mobile unit, it would then be used as a hobby area by the appellant. Taking all this into account, I consider that the proposed use of the mobile unit would remain functionally related to the host property and its use as a dwelling. In effect, the siting of the mobile unit would amount to the provision of a residential annexe.

16. In relation to the appeal site I am required to determine the appeal on the basis of the claimed use. This is that the land would be used to site a mobile unit which would be used as additional living accommodation and for recreation. The unit would not be separated from the host property and I am therefore satisfied that the siting of the mobile unit would not lead to the creation of a new planning unit. Taking these factors into account I conclude, as a matter of fact and degree, that the siting of a mobile unit as proposed would not amount to development requiring planning permission.

### **Conclusion**

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the development described as 'Proposal to site twin unit mobile home in the rear garden at 14 Mill Lane, Portslade, Brighton BN41 2DE (size of proposed mobile home 6600mm x 13600mm)' was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*D Fleming*

INSPECTOR

## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 25 May 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The applicant's mobile unit meets the statutory definition of a caravan, would be sited within the garden of a dwelling house and would not be separated from it. It would be used solely by the applicant's partner's parents and sibling as ancillary residential accommodation and by the applicant for recreation, thus there would not be a new planning unit.

*D Fleming*

Diane Fleming  
Inspector

Date: 3 April 2017

Reference: APP/Q1445/X/16/3162334

### ***First Schedule***

Proposal to site twin unit mobile home in the rear garden at 14 Mill Lane, Portslade, Brighton BN41 2DE (size of proposed mobile home 6600mm x 13600mm).

### ***Second Schedule***

Land at 14 Mill Lane, Portslade, Brighton BN41 2DE

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## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

## Plan

This is the plan referred to in the Lawful Development Certificate dated: 3 April 2017

**by Diane Fleming BA (Hons) MRTPI**

**Land at:** 14 Mill Lane, Portslade, Brighton BN41 2DE

**Reference:** APP/Q1445/X/16/3162334

**Scale:** Not to scale

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