HUNTINGDONSHIRE DISTRICT COUNCIL

24/01982/CLPD

OFFICER REPORT

Case No: **24/01982/CLPD** **Certificate of Lawfulness proposed**

Proposal: **Lawful development certificate for proposed siting of a mobile home.**

Location: **16 Green End Great Stukeley Huntingdon**

Applicant: **Mr Robert Juggins**

Grid Ref: **522529 274319**

DESCRIPTION OF SITE AND APPLICATION

This application relates to land within the original residential curtilage of 16 Green End, Great Stukeley and land to the northeast which applicants state has been in use as residential garden since 2010.

The application site is situated on the edge of Great Stukeley with open fields to the southeast. The site is accessed from a driveway from Green End to 16 which sits behind 18 Green End from the road.

The host dwelling is a two-storey detached dwelling with a sizable curtilage to the front and rear. In terms of constraints the site does not benefit from Listed Building status and is not in close proximity to any Listed Building. The site is not within a Conservation Area. The site as detailed by the Red line plan is wholly in Flood Zone 1.

This application seeks a Certificate of Lawfulness for the proposed siting of a caravan within the residential curtilage of 16 Green End, Great Stukeley a single residential planning unit, would be lawful.

Officers note the proposed caravan will be placed partially within the original residential curtilage and partially on the land to the northeast of 16 Green End, Great Stukeley, which the applicants claim forms part of the planning unit.

NATIONAL GUIDANCE

Town and Country Planning Act 1990

Town and Country Planning (General Permitted Development) (England) Order Amended 2015

Caravan Sites and Control of Development Act 1960

Caravan Sites Act 1968

PLANNING HISTORY

21/01762/HHFUL - Single storey extension to dwelling - Permission - 01.10.2021
96/00477/REM - Erection of dwelling adj 16 Green End Great Stukeley- Details Approved - 05.07.1996
95/00871/OUT - Erection of a Dwelling adj 16 Green End, Great Stukeley - Permission - 10.10.1995

CONSULTATIONS

Due to the nature of the application, to seek if the proposal would fall within Permitted development and therefore not require planning permission, no consultations were sought.

REPRESENTATIONS

No representations have been received at the time of determination.

SUMMARY OF ISSUES

The local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful. Planning merits are not relevant at any stage in this particular application and therefore cannot be taken into consideration when deciding if the proposal would be Lawful Permitted Development as set out under Section 192 of the Town and Country Planning Act 1990.

Unlike the granting of planning permissions, in the issuing of a Certificate of Lawful Permitted Development, the Local Planning Authority cannot impose conditions.

In determining this application, the local planning authority needs to ask, 'Had this proposed operational development commenced, on the application date, would it have been lawful for planning purposes?'

The application sets out that the stationing of a caravan on the land for purposes that are ancillary to the residential occupation of the host dwelling would not constitute development as defined in S55(1) of the Act.

Section 55 (1) of The Town and Country Planning Act 1990 defines development as 'the carrying out of building, engineering, mining or other operations in, on over, or under land, or the making of any materials change in the use of any buildings or other land.

There are two main issues to consider when determining whether the application constitutes development under Section 55 of The Town and Country Planning Act 1990.

1) Does the proposal constitute a material change of use of the land?
2) Does the proposal constitute Operational Development (building, engineering, mining or other operation)?

If the proposal does not constitute development, it will be lawful, and the certificate must be issued.

Use of the Land
The applicant has detailed within paragraphs 3.1 of the planning statement that "The land has been vin use as personal garden land since 2010 for a mix of uses including growing of flowers, vegetables, and keeping some chickens, but all incidental to the use of the main dwellinghouse. There are no boundaries separating the curtilage from the rest of the garden land." This refers to the land to the northeast of the original residential curtilage of 16 Green End, Great Stukeley. The applicant is therefore claiming that the site benefits from a residential use. However, paragraph 5.5 of the planning statement states that the land is not curtilage.

The LPA hold no record of the land to the northeast of 16 Green End having formally changed its use via planning application or certificate of lawful existing development. The applicant has stated "that you do not have to have a CLEUD to show that a use of land is lawful, prior to applying for a CLOPUD. If the evidence demonstrates that all of the land now forms one lawful residential

planning unit (which we have), then the council has to take this at face value" and have supplied planning appeal reference APP/V3310/X/17/3180697 and planning permission officer report for planning reference 3/20/1981/CLXU from East Hertfordshire both operating within the Town and Country Planning Act 1990. The applicant has also provided a Scottish appeal on a CLEUD under planning reference 24/00492/LAW. The Town and Country Planning Act 1990, Permitted Development Order and Caravan Sites Act 1968 do not apply to land in Scotland which is subject to its own legal jurisdiction and Courts. In any case the decision is one of a cost awards rather than a case that is analogous to the circumstances in this application.

Officers note that the above appeal decisions refer to the residential curtilage and the planning unit as two separate concepts and whilst officers acknowledge the decision made above the site must be assessed on a matter of fact and degree on its own merits. In this case 16 Green End benefits from an existing residential curtilage which is clearly defined as land immediately surrounding the dwelling in both previous planning applications reference 21/01762/HHFUL and in aerial photos which show a clear distinction between the residential curtilage of 16 Green End and the land in question.

The land to which the applicant refers has been in the ownership of the applicant since 1989 and is approximately 68 metres long by 26 metres wide which sits at right angles with the dwellings natural and curtilage up to Green End Road. Aerial photos, from 2013 indicate that the site was still used equatorially and further aerial photos from 2018 and 2019 do not support a residential use with the main access appearing to be from the opposite end of the land to that of the dwelling. The land presents as materially and functionally different to that of the residential curtilage and therefore officers do not consider that they are capable of forming the same planning unit for the purposes of residential use.

As the siting of the caravan will partially occupy the land to the northeast of 16 Green End which currently does not fall within the residential curtilage and planning unit, officers consider that a caravan for use in a residential capacity would constitute a material change of use to the land and therefore development.

Operational Development

There are 3 central questions to be answered in order to establish if the siting of a caravan for use an ancillary to the main dwelling would constitute development and the agent on behalf of the applicant has set these out in the accompanying supporting planning statement.

a) Will the 'unit' be a caravan as defined in the Caravan Sites and Control of Development Act 1960 (as amended)?

b) Will the caravan be sited within the grounds of 16 Green End, Great Stukeley? and

c) Will the caravan be used solely for purposes ancillary to the use of 16 Green End, Great Stukeley?

Officers have considered the above questions as set out below against the relevant legislation;

a) Will the 'unit' be a caravan as defined in the Caravan Sites and Control of Development Act 1960 (as amended)?

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 being so transported on a motor vehicle or trailer 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

This definition was modified by Section 13(1) of the Caravan Sites Act 1968 which deals with twin unit caravans. Section 13(1) permits 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 etc. (note: just because a unit could not be lawfully moved on the highway does not preclude it from being a caravan)

Section 13(2) goes on to state that 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 20 meters in length, 6.8 metres in width, and 3.05 metres internally from the floor at the lowest level to the ceiling at the highest level.

These three tests are known as the "Construction Test" "Mobility Test" and "Size Test."
Construction Test
Regarding the "Construction Test", the agent has detailed within the planning statement that the mobile home falls within the definition of a caravan in line with the Caravans Sites Act 1968.

There is no requirement to construct the two sections of the proposal, which must form the final assembly into the whole unit, off site. As long as there are two final sections which can be joined together on the site to make the whole unit, the construction test is passed.

The planning statement details "The Urban Marque lodges comprise two sections and have to be constructed separately before being joined together on site".

Plans have been submitted which show how the proposed unit will be constructed. It is considered that the proposed unit would meet the "Construction Test" set out in Section 13(1) a of the Caravan Sites Act 1968.

Mobility Test
Current appeal decisions demonstrate that the "mobility test" required by Section 13(1) b, requires that the completed unit only needs to be capable of being moved when assembled from one place to another by road. It does not have to actually be moved, and it does not have to be lawful in terms of compliance with highway legislation for example.

The submitted supporting statement details "The mobile home is ….. constructed on site on a temporary support system of plinths which are removable and re-usable should the unit be moved to another location".

Under the circumstances details within the supporting statements, it is considered that the proposed unit would meet the "Mobility Test" set out in Section 13(1) of the Caravan Sites Act 1968.

Size test
The third test to ascertain whether a unit meets the statutory definition of a caravan is the "size test." The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006, 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 meters)

According to the detailed plans submitted the proposed caravan measures 16.7 metres in length by 6.7 metres in width and 2.4 metres to the eaves and 3.4 to the ridge. The overall height measured internally once the ceiling and insulation is completed is 3.05 metres.
It is agreed that on this basis, the "size test" is passed

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Conclusion - Three Tests

The applicant has included within the supporting information details of size, construction, and movability in line with the definition of a caravan under the act. Therefore, on the balance of probabilities based on the evidence submitted, the proposed unit meets the statutory definition of a caravan.

b) Will the caravan be sited within the grounds of 16 Green End Road, Great Stukeley?

16 Green End Road, Great Stukeley is a residential dwelling comprising a single planning unit. The applicant has provided a location plan edged red which includes the land immediately adjacent to the dwelling and extends to the northeast to include a field which officers consider forms a separate planning unit. The planning statement confirms that the caravan will be placed partially within the land adjacent to the dwelling (residential curtilage) and the land to the northeast which the applicant claims forms the planning unit as a whole.

It is evident that there is enough space within the residential curtilage to locate the caravan so that it does not encroach onto the land to the northeast which the officers considers falls outside the residential curtilage.

Based on the evidence submitted, the caravan will be placed partially outside of the residential curtilage of 16 Green End Road, Great Stukeley and therefore would constitute development.

c) Will the caravan be used solely for purposes ancillary to the use of 16 Green End Road, Great Stukeley?

The planning statement states the following;

"The caravan would be occupied by the applicant's mother and father-in-law who are in old age and require a degree of day to support which the applicant and his wife will provide. The caravan will share all public utility services, facilities and the main house address. Meals and laundry will be undertaken in the main house".

As the siting of the caravan will partially occupy the land to the northeast of 16 Green End which currently does not fall within the residential curtilage and planning unit, officers consider that a caravan for use in a residential capacity would constitute operational development.

CONCLUSION

Taking the above into account, it is considered that the stationing of the caravan for use ancillary to the main dwelling in the circumstances set out above, would constitute development under Section 55 of The Town and Country Planning Act 1990.

Whilst the application demonstrates that the proposal falls within the definition of a caravan as set out in Section 13(1) and 13 (2) of the Caravan Sites Act 1968 and The Caravan Sites and Control of Development Act 1960. The application fails to demonstrate that the proposal does not seek to materially change the use of the land to the northeast in which the mobile unit will partially occupy and therefore would constitute development under Section 55 of The Town and Country Planning Act 1990.

Had the plan not included the new purchased land and only the residential curtilage, it is likely the certificate would have been granted as the use would have been ancillary to the main dwelling (within its curtilage). It is not however possible to sever the application as it includes a plan which goes beyond the scope of residential curtilage and creates a new separate planning unit subject to a change of use if using to site a caravan.

Therefore, based on the submitted evidence and on the balance of probabilities, the siting of the caravan within the land edged in red of 16 Green End Road, Great Stukeley, for the purposes set out. Would not constitute lawful development under the provisions of Section 192 of the Town and Country Planning Act (as amended).

Therefore, the certificate should be refused.

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CONTACT OFFICER:
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