

From: Michael Hyde <mh@mhplanning.co.uk>
Sent: 18 February 2025 11:50:31 UTC+00:00
To: "Andrew Clarke" <Andrew.Clarke@midsussex.gov.uk>
Cc: "'Karen Henderson'" <karen@drkh.co.uk>
Subject: RE: DM/24/2908 - Proposed siting of a caravan for ancillary residential use on land at The Barn - Site visit
Attachments: CLUD-340-2009 - Appeal Decision.pdf, CLUD-340-2009 - Expenses Decision.pdf
Importance: High

Hello Andy

Apologies for the delay in being able reply, I was on leave last week and am still catching up with stuff. There are two matters that you have raised.

The first is 'mobility'. As you say, the definition of a caravan includes that the structure (when assembled) must be 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). By definition anything that is not attached to the ground is "capable" of being moved from one place to another. In the current case we have shown that a crane can lift the existing structure and place it on the adjoining land. It could equally therefore lift it and place it on a vehicle or a trailer, and then transport it off site. A vehicle (with or without a trailer) would be able to access the land in the same way that the crane would. The 1968 definition is in any event qualified by an odd double negative that says a structure 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. As was also noted in Brightlingsea Haven Limited and another v. Morris and others 2008 EWHC 1928 (QB) ... "the test which the structure has to pass is as follows. It must either be physically capable of being towed on a road, or of being carried on a road, not momentarily but enough to say that it is taken from one place to another. It is irrelevant to the test where the structure actually is, and whether it may have difficulty in reaching a road". Hopefully this demonstrated that the 'mobility test' can be met. As I said in my Statement, "capable" in this context refers to the ability to do something, but not necessarily doing it. The Act does not say that you have to be able to physically demonstrate that a caravan can be moved from one place to another, only that you must be able to show, on the balance of probabilities, that it is "capable of being moved". An ordinary reading of the provisions would therefore point towards this being a hypothetical test of mobility.

With respect to the second issue, we need to separate out matters relating to the current breach of planning or planning control, and what we proposed to do on the date of the current application, i.e. we need to ignore the fact that there is already a structure on the site. The application was not submitted on the basis of what is already there, it was submitted on the basis of what we propose to do in the future (so thus has to be submitted under S192). If there was no structure on site at the date of the application, we were seeking confirmation that the siting of something that complies fully with the statutory definition of a caravan, on land within the lawful curtilage of the dwelling, and its use for a purpose ancillary to the use of the dwelling, would not be development and so would not need planning permission (I've submitted 150+ S192 successful applications on this basis). It doesn't matter where the structure comes from, i.e. from the field next door or from a factory elsewhere, either way it will be delivered to the application site and simply placed on the land.

This is a very different scenario to the one in the appeal decision that you sent through, where someone applied under S192 for something that had already taken place. As the Inspector says "it is a well-established legal principle that s192 certificates cannot certify the lawfulness of a use begun before the time of the application. In this case, it is clear that the use started some 15 months or so before the application for the s192 certificate was made. The LDC application and appeal have been made on fundamentally the wrong basis, as argued by the Council in its statement".

Here is one of my other recent appeal decisions where the LPA conflated the Scottish equivalents of S191 and S192. I applied to site an ancillary residential caravan on land that was in part within the original curtilage of the dwelling and in part on an additional piece of land that was not curtilage, but which has been used by the occupiers of the house for 10+ years for parking and bin storage and the like, meaning that it was now part of a lawful residential planning unit. The LPA said in their assessment of the application:

“Notwithstanding the details included in the application, the applicant has not previously formally established that the use of the land outwith the curtilage as garden ground and a parking area is lawful. A certificate of lawfulness (existing) for such uses of the land has neither been sought nor issued. In addition, planning permission for a change of use of the land outwith the curtilage has neither been sought nor granted. As such, the lawful use of the land outwith the curtilage of the house remains as agricultural.”

I argued that this was fundamentally wrong, i.e. that we didn't have to have a LDC (or a planning permission) in respect of the existing use in order to demonstrate that the proposed use would be lawful. We not only won our appeal, but also our costs!

So, ours situation is very different to the Ivanhoe Nurseries one because there will be a two-step process. Step 1, remove the existing structure from the site, thereby remedying the current breach of planning control. Step 2, as a totally separate proposal, bring a caravan onto a different part of the site that is wholly within the lawful curtilage of the property. That proposal is well within the scope of a S192 application.

Regards

Mike

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New Office Address: 63 West Princes Street, Helensburgh, G84 8BN

From: Andrew Clarke <Andrew.Clarke@midsussex.gov.uk>

Sent: 14 February 2025 18:52

To: 'Michael Hyde' <mh@mhplanning.co.uk>

Cc: 'Karen Henderson' <karen@drkh.co.uk>

Subject: RE: DM/24/2908 - Proposed siting of a caravan for ancillary residential use on land at The Barn - Site visit

Dear Mike,

Thanks for the email(s) below and apologies for the delay coming back to you.

On the two matters raised, in respect of the movement by being towed, or by being transported on a motor vehicle or trailer etc, I note your comments and the contents of the appeal decision, however, it remains the case that the evidence submitted to support the certificate issue relates solely to the movement of a caravan by lifting it. It might then be able to be placed on a trailer etc but the application doesn't state this. An explanation as to how and the process by which a caravan could then be transported by road etc should suffice to cover this element.

With respect to the remit and scope of applications under s.192 I again note your comments, but remain unconvinced that the description of the development ('the siting of a caravan for ancillary residential use') could, on the date of the application, have been lawful. This is based upon the simple description provided relating solely to the siting of a caravan (I note your intention to lift and temporarily re-site the current unauthorised development but this does not form part of the description of the application) and that were a caravan have to been sited in the position indicated on the plan included with the application, that such an operation would not have been possible due to the presence of the existing unauthorised development (which in the absence of any other decision remains in the opinion of the LPA building) on partially the same land.

To be clear this concern relates to the principle of the determination of an application under s.192 where, by common agreement I would suggest, the development has already taken place. I note the content of the attached appeal decision which I believe nicely summarises the position regarding the interaction of s.191 and s.192 applications and states:

Section 192(1)(a) of the Act provides for the making of an application to ascertain whether any proposed use of buildings or other land would be lawful. It a well-established legal principle that s192 certificates cannot certify the lawfulness of a use begun before the time of the application. In this case, it is clear that the use started some 15 months or so before the application for the s192 certificate was made. The LDC application and appeal have been made on fundamentally the wrong basis, as argued by the Council in its statement.

I therefore remain unconvinced that, with the development already and remaining in situ, that the approach of making an application under s.192 to affectively 'regularise' an unauthorised development is the correct one.

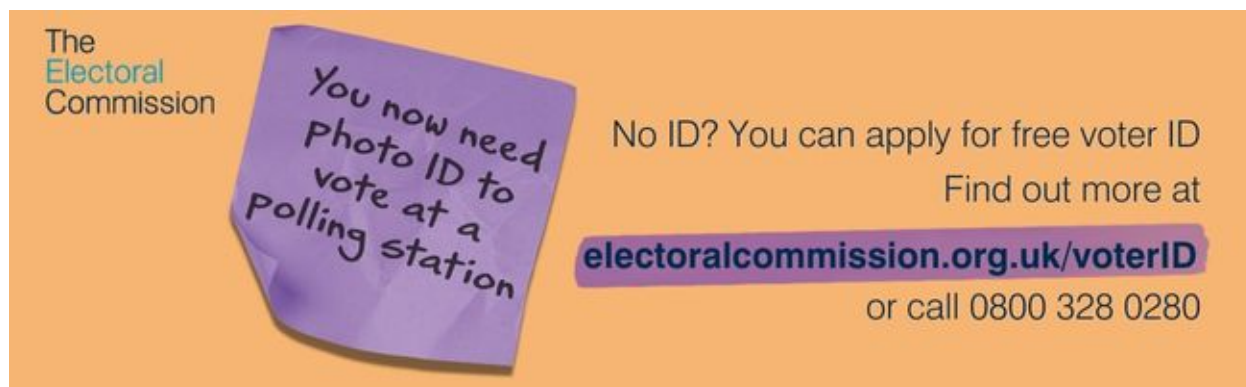
I note your comment regarding having submitted applications of a similar nature (specifically relating to the s.192 vs s.191 argument) to this elsewhere (I don't believe any have been submitted to this LPA) and therefore would again invite you to direct me to, or else provide copies of these Certificates of Lawfulness and where appropriate any commentary to accompany them.

Again I'd be grateful for your comment within the next 10 days. I will hold off making any decision on the application in the meantime.

Kind regards

Andy Clarke BSc (Econ), PGDip
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From: Michael Hyde <mh@mhplanning.co.uk>
Sent: 09 February 2025 20:28
To: Andrew Clarke <Andrew.Clarke@midsussex.gov.uk>
Cc: 'Karen Henderson' <karen@drkh.co.uk>
Subject: RE: DM/24/2908 - Proposed siting of a caravan for ancillary residential use on land at The Barn - Site visit

Hello Andy

I am going to be on leave next week, but will be checking e-mails on and off.

Base on my comments below are you know comfortable that the LDC will be able to be issued?

Regards

Mike

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New Office Address: 63 West Princes Street, Helensburgh, G84 8BN

From: Michael Hyde <mh@mhplanning.co.uk>
Sent: 03 February 2025 12:50
To: 'Andrew Clarke' <Andrew.Clarke@midsussex.gov.uk>
Cc: 'Karen Henderson' <karen@drkh.co.uk>
Subject: RE: DM/24/2908 - Proposed siting of a caravan for ancillary residential use on land at The Barn - Site visit
Importance: High

Hello Andy

As promised on Friday, I have responded to your points below in red.

Regards

Mike

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From: Michael Hyde <mh@mhplanning.co.uk>
Sent: 31 January 2025 07:42
To: 'Andrew Clarke' <Andrew.Clarke@midsussex.gov.uk>
Cc: 'Karen Henderson' <karen@drkh.co.uk>
Subject: RE: DM/24/2908 - Proposed siting of a caravan for ancillary residential use on land at The Barn - Site visit

Morning Andy

I'm on a train to Edinburgh just now so will respond to your points in detail on Monday if that's OK.

Regards

Mike

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From: Andrew Clarke <Andrew.Clarke@midsussex.gov.uk>
Sent: 30 January 2025 17:24
To: 'Michael Hyde' <mh@mhplanning.co.uk>
Cc: 'Karen Henderson' <karen@drkh.co.uk>
Subject: RE: DM/24/2908 - Proposed siting of a caravan for ancillary residential use on land at The Barn - Site visit

Dear Mike,

I refer to the above application. As you note it was my intention to determine the application by tomorrow (31/1) however, upon review there are a couple of matters which require addressing and for which I invite your comments upon.

Firstly in respect of definitions of the Caravan Act 1960 (accepting that any proposed caravan would be a single unit caravan) s. 29(1) states that:

“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,’

The contents of the application are noted, in particular your evidence relating to the mobility test and the quote for the moving of the existing structure, however, there is no reference to how the structure may be towed or transported by road. The evidence solely relates to the movement of

the structure in one piece (which is accepted) and the proposal indicates it been craned and placed in the adjacent paddock before being returned to the site (albeit in a different location). No evidence as to the ability of the structure to be moved in one place by road has therefore been received and currently the application does not prove, on the balance of probability, that the structure would comply with all elements of the definition of the Caravan Act 1960. I'd be grateful for your comments and I am happy to accept additional information in this respect prior to determining the application.

If the structure can be lifted as a single entity (and we have demonstrated that it can be), then by definition it will also be able to be transported by road on a motor vehicle or trailer. In the context of the attached appeal, which was submitted with the application, I was the LPAs expert witness. The issue of mobility was central to the outcome, and I was cross-examined fairly brutally on this point by the appellant's barrister! The Inspector found (para 27):

"However, and critically, neither the appellant nor Mr Simon Parsons had given thought to lifting the structure on beams, as Mr Hyde had. Neither, on the evidence before me, had appropriate professional advice been taken on that or any other option. If the structure were placed on a vehicle or trailer with the lifting beams in situ, they could, with appropriate bracing, continue to provide support to the extended parts. Accordingly, it has not been demonstrated that the appellant had considered all reasonable measures for moving the structure."

Hopefully this we reassure you that, on the balance of probability, the caravan could be moved by road if it had to be.

Secondly, and potentially of more importance, relates to the principle of the development being address through a s.192 application. For clarity Section 192(2) of the Town and Country Planning Act 1990 states that:

*'If, on an application under this 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; and in any other case they shall refuse the application'*

Noting the wording in bold it is necessary to consider the lawfulness of the proposed development on the date of the submission of the application (rather than at its determination or any point in the future). The relevant date is therefore 28th November 2024. At that time the structure subject to the application (and there appears to be no dispute the structure the subject to the application is that already in situ upon the site) was already upon the site and has been considered unauthorised development (through the refusal of s.191 application DM/24/2004.) The proposed development subject of the current application could therefore not take place as the structure subject to the application was already upon the site and was unauthorised. It would therefore not have been possible for the proposed development to have taken place on 28th November 2024. That being the case the proposed development would lie outside of the scope of a s.192 application and no certificate could be issued.

As you say this application was submitted under the provisions of Section 192 of the 1990 Act which states that if any person wishes to ascertain whether (a) any proposed use of buildings or other land, or (b) any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the Local Planning Authority specifying the land and describing the use or operations in question. If, on an application under this 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 should issue a Lawful Development Certificate to that effect.

What we are therefore asking the Council to confirm is that, if we lifted the caravan from its current position, and then repositioned it wholly within the curtilage of the dwelling, on the date of the application (i.e. on 27 November 2024), this would have not resulted in there being a breach of planning control (i.e. this would have been lawful). I don't think that this can be outside the scope of a S192 application. It is what we proposed to do on the date that the application was submitted.

The point that I am making is that the act of removing the caravan from its current position will remedy the breach of planning control. That is then the end of that chapter in the planning history of the site. What we then propose to do is site a caravan within the curtilage of the dwelling. It doesn't matter where the caravan comes from, of that it is the same caravan, it is something that we propose to do. In that context I have submitted 150+ applications under S192 for just this same scenario, i.e. on the date of the application we propose to site an ancillary residential caravan in the garden grounds of the property.

To my mind it would be a S191 application that would be wholly inappropriate. To go down this route we would have to move the caravan first, and then submit the application on the basis of an existing use or development. We however need to know that the move, which will be costly, will be lawful before we undertake it.

I would invite you to make representations and submit evidence (noting the it is not possible to amend the description of the proposed development or materially amend the substance of the application) with respect to the above and will hold the determination of the application in abeyance pending your comments.

Kind regards

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