

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/2908	Case Officer:	Andrew Clarke
Application Type:	Lawful Development Certificate -Proposed		
Proposal:	Proposed siting of a caravan for ancillary residential use on land at The Barn.		
Site:	The Barn, Nyes Hill Farm, Wineham Lane, Bolney, Haywards Heath, West Sussex, RH17 5SD,		
Validation Date	28 Nov 2024	Overall Expiry Date:	26 Dec 2024
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	27 May 2025
Target Date:	23 Jan 2025	Recommending Officer Signature:	<i>Andrew Clarke</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	28 May 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/2908

The Barn, Nyes Hill Farm, Wineham Lane, Bolney, Haywards Heath, West Sussex, RH17 5SD
Proposed siting of a caravan for ancillary residential use on land at The Barn.
Mrs Karen Henderson

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTEES

None

PARISH COUNCIL OBSERVATIONS

None received.

INTRODUCTION

The application seeks the issue of a Certificate of Lawful Development under s.192 of the Town and Country Planning Act 1990 for the proposed siting of a caravan for ancillary residential use on land at The Barn.

RELEVANT PLANNING HISTORY

DM/22/3185 - Change of Use of land to residential garden and retention of part-built garden annexe building - Refused 12th December 2022 for the following reasons:

1. By virtue of its scale, design and siting the building represents a new unit of residential accommodation in an unsustainable rural location. It is therefore contrary to policy DP6, DP12 and DP15 of the Mid Sussex District Plan 2014-2031, Policy BOLBB 1 of the Bolney Neighbourhood Plan and the contents of the National Planning Policy Framework.

2. By virtue of the scale, design and siting, the building causes harm to the character and appearance of the rural area in which it lies and is contrary to policies DP12 and DP26 of the Mid Sussex District Plan 2014-2031 and policy BOLE2 of the Bolney Neighbourhood Plan and the contents of the National Planning Policy Framework.

3. By virtue of the siting of the building within an Ancient Woodland buffer zone the development is considered to cause potential harm to the Ancient Woodland contrary to policy DP37 of the Mid Sussex District Plan 2014-2031, policy BOLE1 of the Bolney Neighbourhood Plan and the contents of the National Planning Policy Framework.

AP/23/0047 - s.78 appeal against refusal of application DM/22/3185 - Appeals dismissed 15th September 2023

DM/24/2004 - s.191 CLUED application for Siting of a caravan within the grounds of the main dwelling - Refused 15th October 2024 for the following reason:

Based on the information available to the Council and on the balance of probabilities the structure that has been constructed constitutes a building as the joining of the two sections was not the final act of assembly. As such the building represents operational development, as defined by section 55(1) of the Town and Country Planning Act 1990.

The building is not located wholly on land which is either within the residential curtilage of the existing dwelling, in the same planning unit as the existing dwelling or within land that is used for residential purposes. As such the works constitute a material change of use of the land in which the building is located, as defined by section 55(1) of the Town and Country Planning Act 1990. Therefore, a certificate for lawful development cannot be issued and the application is refused

SITE AND SURROUNDINGS

The site consists of a converted barn now in use as a residential property with associated outbuildings lying within a plot of approximately 0.4ha in size. The residential property and associated buildings lie in the north-western corner of the land with the access via an unmade track (also a PROW) lying to the north. The land thereafter extends out in maintained garden and orchard to the east. To the south lies an agricultural field owned by the applicants and used for the grazing of livestock whilst to the east of the site is an area of ancient woodland. Further residential properties lie to the west, one a listed building, with a clump of ancient woodland lying on the eastern boundary and extensive views across the agricultural field to the south.

The surrounding area is rural in its nature and is characterised by open fields, woodland and sporadic residential development and the site lies in the countryside for the purposes of the policies of the development plan.

APPLICATION

The application seeks the issue of a certificate of lawfulness for the proposed siting of a caravan for ancillary residential use on land at the barn. The application is made under s.192 of the Town and Country Planning Act 1990 for development which has yet to take place; ie: is proposed. It is noted that a building (that subject to refused s.191 application DM/24/2004) is also situ upon the land and that the current application relates to this item.

The application, in essence, seeks to propose to lift and remove the current item from the land and thereafter return it to the land in a revised location wholly within the curtilage of the dwellinghouse.

The application is supported by evidence as to the ability to, in principle, lift the current item in one piece (thereby rendering it a caravan in accordance with the definitions within The Caravan Sites and Control of Development Act 1960, as amended by Caravan Sites Act 1968 and the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006) and that the use of the item will thereafter be ancillary to the dwellinghouse and as such not be considered 'development' for the purposes of s.55 of the Town and Country Planning Act 1990.

The application is therefore made on legal grounds alone and is supported by appeal decisions and case law relating to the lawfulness of such activity.

LEGAL FRAMEWORK AND LIST OF POLICIES

Section s.192 of the Town and Country Planning Act 1990 relates to applications seeking to establish whether a proposed operation is lawful and states:

'(1) 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, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) 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.

The onus of proof is firmly on the applicant and the standard of proof is the balance of probability. If there are contradictions in the applicant's evidence on material issues, then the LPA would be entitled to refuse the application for the certificate.

It should be noted that this is solely an evidential test and the planning merits of the development cannot be taken into account in the determination of the application.

ASSESSMENT

The primary consideration relates to whether the application, and the development, can fall within the scope of s.192 of the Town and Country Planning Act.

Firstly it is not contended that the siting of a caravan (providing it complies with the definitions within The Caravan Sites and Control of Development Act 1960, as amended by Caravan Sites Act 1968 and the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006) within a residential curtilage and used for purposes ancillary to the dwellinghouse to which the land relates would not be considered '*development*' for the purposes of s.55 of the Town and Country Planning Act 1990 and therefore would not require planning permission.

However, in this instance it is acknowledged that the item to be sited within the curtilage is the item currently situated on land under the ownership of the applicant and that this is the same item as considered under previously refused s.191 application DM/24/2004. No appeal against this decision has been made. This decision confirmed that the item on the land is not a caravan by virtue of its construction and that it is a building and building operation for the purposes of s.55 of the Act. The current application contains information stating how a caravan maybe lifted and sited upon the land but noting the provisions of s.192 is to consider proposed development, the application cannot reassess the lawfulness or status of the development already upon the land. It cannot therefore be proved or considered that the item to be placed within the curtilage is a caravan and is a building, and such the application fails on these grounds.

Secondly, and noting the above, the development is considered to have already taken place and that this development is unauthorised. Notwithstanding the proposed siting solely within the curtilage of the dwellinghouse (as opposed to the current siting of the building which is not wholly within the curtilage) the proposed operation within the application (the siting of the item upon land associated with the dwellinghouse) has, in part, already taken place. The supporting information included with the application includes the proposed removal of the current item from the land, however, this is not an operation in itself and is not included within the description of the application. As such the LPA could not require this operation to take place and the grant of the application would, in reality, authorise a development which has already taken place and would run contrary to the decision made on s.191 application DM/24/2004. It is noted that this decision has not been appealed and there is no avenue to reevaluate the lawfulness of a development already considered to be unauthorised.

Finally the requirements of s.192 requires the LPA to consider the lawfulness of the proposed development on the date of the application was submitted. In this case the relevant date would have been 28th November 2024. On that date, and notwithstanding the other reasons outlined above, it would not have been possible for a caravan to be placed upon the land in the identified position (and putting aside that it is acknowledged and agreed that the proposed caravan is the item already on the site) because the existing item (which the LPA is of the opinion is a building) is already partially on the land and as such would obstruct the siting of the caravan in the proposed location. Therefore on 28th November 2024 it would not have possible to undertake the operation as laid out and described in the application.

Conclusion

As noted under s.192 of the Town and Country Planning Act 1990 applications seek to establish whether a proposed operation would be lawful, and that the applicant must provide information satisfying the Council that at the time of the application, the proposed development would have been lawful.

As addressed above, whilst in essence the description of the operation may be lawful, on the date the application was made, it could not have been as the operation relates to development which had already taken place, citing the movement of an item upon the land which has already been subject to a legal determination confirming it as a building, and that by virtue of the presence of the existing building, a caravan could not have been located in its place.

Furthermore it is considered that the operation, seeking as it does to readdress the lawfulness of a development already considered under a s.191 determination, falls outside of the scope of a s.192 application and therefore cannot be considered a lawful determination.

Therefore by virtue of the operation described within the description having already taken place, and that items essential to the operation have already been deemed unlawful and that on the date of the application, the proposed operation could not have taken place, the operations described could not be considered to be lawful and a certificate of lawfulness cannot be issued The application is therefore refused.

Decision: Refusal

Case Officer: Andrew Clarke