

From: Andrew Clarke
Sent: 14 February 2025 18:51:48 UTC+00:00
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
Attachments: Appeal Decisions 3282463 & 3283003.pdf

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 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.

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

Michael Hyde MRTPI
MH Planning Associates
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m: 07816 907203

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

Michael Hyde MRTPI

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

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

Michael Hyde MRTPI

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

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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