



Town and Country Planning (Scotland) Act 1997 Appeal Decision Notice

Decision by Katrina Rice, a Reporter appointed by the Scottish Ministers

- Certificate of Lawful Use appeal reference: CLUD-390-2004
- Site address: 35 Mayfield Steet, St Ninians, Stirling, FK7 0BZ
- Appeal by Angela Clarke against the decision by Stirling Council
- Application for certificate of lawful use 23/00713/LAW dated 23 November 2023 refused by notice dated 30 January 2024
- The subject of the application: siting of a caravan/mobile home for ancillary residential use in the garden
- Date of site visit by Reporter: 9 April 2024

Date of appeal decision: 18 June 2024

Decision

I allow the appeal and grant a certificate of lawful use in the terms set out in the certificate at the end of this notice.

Preliminary matter

An application for an award of expenses has been made by the appellant against the council. My decision on that claim for expenses is the subject of a separate decision notice.

Reasoning

1. This application for a certificate of lawful use under section 150(1) of the Act has been submitted on the basis that the siting of a caravan/mobile home within the garden is an ancillary residential use which does not constitute development. In determining this appeal, I am considering whether the caravan/mobile home is lawful. I am not considering whether the proposal is acceptable in planning terms.
2. Both the council and the appellant agree that the structure is a “caravan” as defined in section 13(1)(a) and (b) of the Caravan Sites Act 1968. The size element of the definition was updated by the Caravan Sites Act 1968 (Amendment of Definition of caravan) (Scotland) Order 2019 to allow a maximum size of 20 metres by 6.8 metres with a maximum internal height of 3.05 metres. The twin unit which is the subject of this appeal, is “L shaped” in form and measures 7.58 metres by 5.4 metres, including an area of decking. It has a maximum external height of 2.5 metres (approximately 2 metres internal). It occupies approximately 14% of the 290sqm appeal site and increases the internal residential floorspace available by approximately 30sqm (26%).
3. Legislation sets out that a caravan or mobile home can be a structure that is designed or adapted for human habitation which is composed of not more than two sections which are physically capable of being moved by road from one place to another, even if it is

not legally allowed to be moved on a highway when assembled. The appellant asserts that the structure's siting does not involve any construction of deep foundations. Instead it sits on height adjustable legs and feet, which I noted on my site inspection. Services are linked to the structure but can be easily disconnected. Furthermore, the assembled structure has been designed by the manufacturer with the appropriate structural integrity to allow it to be lifted and moved around the site, or off the site onto a lorry or trailer, by crane. The appellant has submitted a method statement showing how the structure is physically capable of being moved. Given the above, I am also satisfied that the structure meets the definition of a caravan under the relevant legislation, due to its nature, size and its ability to be moved. The siting of a caravan on land is generally regarded as a use of the land rather than operational development.

4. Section 26(1) of the Act states that "...development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or making of any material change in the use of any buildings or other land...". Section 26(2) lists seven operations or uses of land which "...shall not be taken for the purposes of the Act to involve development of the land...". Section 26(2)(d) states that "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such" is not to be taken to constitute development of the land. The council considers that there has been a material change of use in the land which would not be incidental to the enjoyment of the dwellinghouse. What defines a material change or an incidental use is a matter of fact and degree.

5. The caravan/mobile home is located on the side-garden of the property and is, therefore, within its curtilage. The appellant asserts that the caravan/mobile home has been and is intended to be, occupied by her elderly mother only. As a result, both services and the postal address are shared with the main house, as are the access and garden. Whilst the caravan/mobile home does have limited space for cooking, the appellant maintains that many domestic tasks such as laundry and cooking take place within the main house, providing associated opportunities for social interaction and mutual support. Furthermore, while the appellant is at work, her mother is present within the main house to help with dog sitting/walking and the receipt of parcels and deliveries.

6. The caravan/mobile home consists of a kitchen/open lounge, a bedroom and a bathroom. I, therefore, acknowledge that it would be capable of being occupied as a separate residential unit. However, the intended use is to provide ancillary residential accommodation for an elderly family member, who would also make some substantial use of the main house, while still allowing a level of independence and self-sufficiency. I am persuaded that, as a matter of fact and degree, provided that a caravan/mobile home of this size is occupied as ancillary and subordinate to the occupation of the dwellinghouse in the manner described, it would not constitute a material change of use of the land. The use would be for a purpose incidental to the enjoyment of the dwellinghouse. Planning permission would not be required. The appeal site would remain a single planning unit in single family occupation. The council's assertion that the planning unit now contains a dwelling house and a caravan site does not alter my opinion. In terms of section 150(2) of the Act, no enforcement action could be taken and the use is lawful. Conversely, should the caravan/mobile home ever be used as a separate residential unit in the future, the council could then take enforcement action.

7. Parties have invited me to consider the findings in a number of appeal decisions as well as case law that is believed to be relevant. I have paid careful attention to all of this material, nevertheless, my decision must relate to the particular facts of this case. Section 154(3)(a) of the Act requires a certificate to be issued on appeal if the appeal

decision maker is satisfied that the authority's reason for refusal is not well-founded. In this case, I find that the siting of the caravan/mobile home within the curtilage of the dwelling house for incidental residential use is lawful. Accordingly I find that the authority's reason for refusal is not well-founded, and conclude that the certificate should be granted.

8. Finally, the council has suggested that should a certificate be issued, the description should be altered to reflect the incidental nature of the use, the person occupying the caravan/mobile home and reference any plans explicitly. In addition, an advisory note is recommended with regard to any material change in circumstances. Given the importance of accurately describing what use the certificate relates to, I have amended the description of the development to more closely reflect and refer to section 26(2)(d) of the Act. In addition, I have added reference to the associated plans. Note 3 of the certificate already refers to "Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action". I do not consider that any further changes are justified or necessary.

Katrina Rice

Reporter



Certificate of Lawful Use or Development

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 150 AND 151 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 Regulation 44(6)

I hereby certify that on 23 November 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate was lawful within the meaning of section 150 of the Town and Country Planning (Scotland) Act 1997, for the following reason(s):

Under the terms of section 26(2)(d) of the Act, the siting of the caravan/mobile home within the curtilage of the dwellinghouse and its use incidental to the enjoyment of the dwellinghouse would not constitute a material change of use of the land or development.

Katrina Rice

Reporter

Date: 18 June 2024

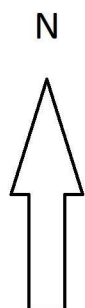
First Schedule: the siting of a caravan/mobile home for incidental residential use, under section 26(2)(d) of the Act and as set out in the following plans:

- Appellant drawing numbers 01-04 (Elevations)
- Appellant drawing number 05 (Floor plan)

Second Schedule: the side garden of 35 Mayfield Street, St Ninians, Stirling, FK7 0BZ

Notes

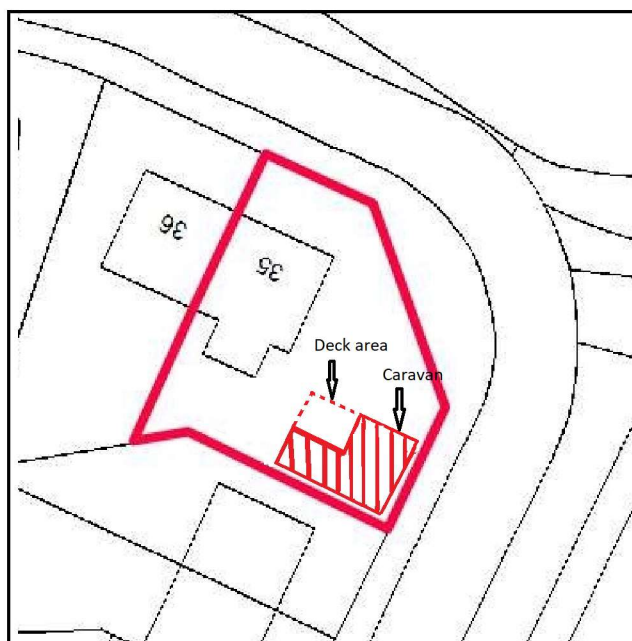
1. This certificate is issued solely for the purpose of section 150 of the Town and Country Planning (Scotland) Act 1997.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the specified date and, thus, was not liable to enforcement action under section 127 of the 1997 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 151(4) of the 1997 Act, which states that the lawfulness of a described 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 relevant to determining such lawfulness.



35 Mayfield Street, Stirling

Block Plan

Scale 1: 500



0 10m 25m

