

DELEGATED DECISION REPORT

HPK/2024/0368 Valid 23/09/2024	HARPUR COTTAGE UNNAMED ROAD REAR OF PVC FACTORY TO HARPUR COTTAGE WHITEHOUGH	LAWFUL DEVELOPMENT CERTIFICATE FOR EXISTING ANNEXE PROVIDING SINGLE STOREY TWO BEDROOM OVERFLOW ACCOMMODATION FOR MEMBERS OF THE FAMILY RESIDING IN THE MAIN DWELLING, AND HOME OFFICE FACILITY. (CERTIFICATE OF LAWFULNESS - EXISTING)
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MAIN ISSUES

- Whether the annex amounts to operational development or a use of land with regard to Section 55 of the Town and Country Planning Act 1990 and the Caravan Act 1960
- In the event that annex does amount to operational development, whether the proposed development is permitted having regard to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, and thus whether the structure requires planning permission

DESCRIPTION OF SITE

The application site relates to Harpur Cottage, a two storey detached residential property located immediately north of the Peak Forest Tramway and between the larger village of Chinley and the smaller hamlet of Buxworth.

The property benefits from a generous curtilage which is characterised by a private driveway, large garden south of the property, and a smaller area of amenity space to the rear. An inspection of the property confirms owing to its fenestration design and layout, the southern elevation of the property reads as the principal elevation.

The garden area to the front of the house, west of the private driveway accommodates a single storey structure, which is described as an ‘annex’ which serves as ancillary living accommodation and a home office for the main property known as Harpur House.

A review of the plans and elevations submitted with the application show that the structure has a length of 19m and a width of 5.9m.

The 'annex' is situated on an area of land immediately to the north of the internal access driveway, and adjacent to a defined private garden on one side, and the western boundary of the site on the other, constructed in timber with a shallow dual pitched roof.

An inspection of the structure shows that the 'annex' is set on a timber base that rests on concrete supports that in turn are cemented to the ground. The structure is also shown to be connected to mains and utilities by way of pipes. A large area of hardstanding has been formed under and around the annex.

The Floor Plans show that the Annex contains 2no. Bedrooms, one served by a Dressing Room, a Kitchen/Living and Dining Area, Bathroom, Utility, Office, WC, and Shower Room.

PROPOSAL

Following a complaint made to the Council's Enforcement Team, and subsequent investigation, the applicant is seeking a Certificate of Lawful Development under Section 191 of the Town and Country Planning Act 1990 to retain the existing annex.

The Application Form describes the existing use, building works or activity as follows:

"Existing Annex providing single storey two bedroom overflow accommodation for members of the family residing in the main dwelling, and the home office facility. This is not a separate planning unit. The use is incidental to the main dwelling. The annex is located within the domestic curtilage, it would share facilities and access with the main house. The Annex conforms to the Caravan Act."

The grounds for the existing use, building works or activity being lawful, as set out on the Application Form is stated as follows:

"The Annex conforms to the Caravan Act, was delivered to site in two sections on two lorries and bolted together on site. The Annex is therefore not requiring planning consent. Size is within the required parameters of size, mobility and construction."

"The Annex conforms to the Caravan Act in terms of design, mobility, size and construction, and therefore does not require planning consent. The Annex is not a separate planning unit. The Annex is incidental use to host dwelling."

The application is accompanied by the following plans and documentation to support the position that the existing use, building works or activity is lawful:

- Location Plan
- Block Plan
- Annex Sales Details
- Technical Information 'Quick Garden' Structure
- Structural Analysis and Design Report
- Lifting Support Details
- Plans and Elevations

- Photographs of Structure being lifted and transported
- Impact and Justification Statement
- Flood Risk Assessment

PLANNING HISTORY

HPK/0001/1316 Proposed Erection of Garage (Approved)

HPK/0002/8807 Two Storey Side Extension (Approved 15/01/1990)

OFFICER COMMENTS

1. **Whether the proposed structure amounts to a material change of use of land or operational development having regard to Section 55 of the Town and Country Planning Act 1990 and the Caravan Act 1960**

Section 55(1) of the Town and Country Planning Act 1990 defines the meaning of “development”, which is set out as follows:

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, ‘development’ means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act ‘building operations’ includes –

- (a) demolition of buildings;*
- (b) rebuilding;*
- (c) structural alterations of or additions to buildings; and*
- (d) other operations normally undertaken by a person carrying on business as a builder.*

Section 55(2) sets out the operations or uses of land that does not amount to development, which (amongst other things) includes:

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;

Whether a material change of use has occurred is a matter of judgement on the factors of the case. However, there are certain principles, emerging from the courts that need to be observed and applied.

The question of material change of use boils down to whether the use (the introduction and occupation of a caravan) has resulted in a smaller area of the planning unit that can be identified as being physically and functionally separate, otherwise it will be ancillary to the primary use of the existing planning unit (normally the unit of ownership and occupation) as a single dwellinghouse.

As set out under *Uttlesford District Council v Sec of State for the Environment and White* (March 1991), matters such as whether a unit is self-contained, the size and

extent of the accommodation provided, the arrangements for utilities, whether the occupant is a blood relative or a dependent etc provide some indication as to whether a material change of use occurs, but none of them are determinative (Uttlesford).

Little analysis is provided within the supporting Statement to support the case that the annex does not constitute a material change of use, with the following passages most relevant:

“The building is providing a timber framed annexe, with a home office incorporated within the structure. It is anticipated that this is deemed overflow accommodation and for office use, only allied to the main dwelling, and only to be used by the occupying family of Harpur Cottage, and close friends. Conforms to The Caravan Act in terms of its design, mobility, size and construction.”

“The structure is within the proposed domestic curtilage, access is via an existing access point from the Highway..”

The Application Form describes the existing use, building works or activity as follows:

“Existing Annex providing single storey two bedroom overflow accommodation for members of the family residing in the main dwelling, and the home office facility. This is not a separate planning unit. The use is incidental to the main dwelling. The annex is located within the domestic curtilage, it would share facilities and access with the main house. The Annex confirms to the Caravan Act.”

The grounds for the existing use, building works or activity being lawful, as set out on the Application Form is stated as follows:

“The Annex conforms to the Caravan Act, was delivered to site in two sections on two lorries and bolted together on site. The Annex is therefore not requiring planning consent. Size is within the required parameters of size, mobility and construction.”

1a Does the siting of the annex result in a material change of use of the land?

The annex is sited towards the southern boundary of the site boundary as defined by a red edge on the Location Plan, beyond the southern perimeter of the front garden, with a distinct change in the character and functionality of land noticeable in the area where the ‘annex’ is sited. Based on the specific characteristics of the area of land that accommodates the ‘annex’ comparable to that more intimately associated with the dwellinghouse, Officers do not accept that the annex lies within the domestic curtilage of the property.

However, consideration must be given as to whether the land in question falls within the same planning unit as the dwellinghouse, to inform a judgement as to whether a material change of use has occurred as a result of the introduction of this annexe.

The concept of ‘ancillary use’ is a recognition that a single primary use normally comprises a variety of different uses which if they existed on their own right might be

classified differently but because they are associated with and functionally linked to a primary use they do not result in a material change. It is well established in planning law, therefore, that if a caravan is used within the same planning unit for purposes that are ancillary to the primary use and that it does not result in physically and functionally separate planning unit – a material change of use will not occur.

The doctrine of the planning unit is a tool for determining the precise area of land against which to assess the materiality of change. It follows that to be an ancillary use a caravan must be used in the same planning unit as that of the primary use (i.e. that of the dwellinghouse). The planning unit will be the unit of one ownership and occupation, unless until some smaller unit can be recognised as the site activities which amount in substance to a separate use both physically and functionally.

Whilst not considered to fall within the domestic curtilage (See below), Officers do concur with the applicant that the area of land that accommodates the 'annex' is situated within a singular planning unit, that contains the main residential dwellinghouse, the internal access, garden, hard standing and outbuilding, due to its strong and definitive boundary treatment, particularly on its southern side with the Peak Forest Tramway.

As such, notwithstanding an assessment as to whether the annex and associated works amount to operational development (see 1b below), it is accepted that the siting of this annex does not result in or constitute a material change of use.

1b. Does the introduction of the annex amount to operational development?

Section 29 of the Caravan Sites and Control of Development Act 1960 defines a caravan as follows:

“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, 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 under Section 13 of The Caravan Sites Act 1968 to read as follows:

Twin-unit caravans:

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 (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of

the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

The plans and information submitted with the application relies on this updated definition, whereby the structure is delivered to the site in two parts and essentially bolted together on site. In the absence of any alternative facts or evidence, Officers do not dispute the fact that the annex currently on site and subject of this application is capable, and indeed, was, delivered to the site by a vehicle in two separate units and pieced together on site. It is also not disputed that the annex has been adapted for habitable accommodation.

However, a site inspection has revealed that there are aspects of operational development associated with this annexe that amounts to a departure from the above definition, and results in Officers reaching the conclusion that the annexe amounts to a building, which in turn constitutes operational development in itself.

Firstly, it is evident that the footprint of the annex, underneath the finished floor level is characterised by stone chippings. Owing to the fact that prior to this annex being introduced to this parcel of land, this area would have been unkempt grassland, it is considered that the laying of this hard standing, which extends to some 113m², amounts to an engineering operation that would require planning permission in its own right. The hardstanding would not benefit from Permitted Development Rights under Part 1 class F on account of being outside the curtilage.

Second, an inspection of the annex in situ shows that the structure sits on top of a series of concrete blocks that have a height of approximately 500mm above ground floor level, which are in turn bound by concrete, and thus permanently attached to the ground. The fact that the annex structure relies on being attached to and based on these concrete blocks leads Officer to the judgement that the annex is a building, and not a Caravan. This opinion is supported and amplified by the fact that the annex is connected to mains water and utilities, and that the size and scale of the annex would allow the structure to function as an independent dwellinghouse, and does not require any reliance on the main dwellinghouse (e.g. for cooking, toilet or washing facilities).

Lastly, it is clear from a site inspection that the annex benefits from an external covered verandah with an approximate depth of 2m that is supported by timber pillars that are bolted in to the base structure supported by a canopy roof. This aspect reads an extension to the main mass of the annex, and due to its scale and height above ground floor level, supported by permanent concrete blocks atop a permanent area of hard standing, amounts to operational development.

As a consequence Officers reject the argument submitted by the applicant that the annex falls within the definition of a caravan, and comprises operational development in the form of the laying of some 100m² of hard standing (engineering operation) and the construction of a building, owing to its reliance on concrete blocks permanently attached to the ground.

2. In the event that the proposed structure does amount to development, whether the proposed development is permitted having regard to

Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, and thus whether the structure requires planning permission

As per the above analysis, the structure and associated works is considered to amount to operational development by virtue of its permanence, owing to the fact that the structure is connected to and relies upon a series of concrete blocks that are concreted to the ground, and such amounts to development as per the definition under Section 55 of the Act 1990.

As a consequence, the only way in which this structure could be judged as being lawful and not requiring planning permission, would be for the structure to fall within the parameters of Schedule 2, Part 1, Class E of the GPDO, which permits the introduction of outbuildings within the curtilage of a residential dwellinghouse.

The question of 'curtilage' is a matter of fact and degree as confirmed in a number of High Court Judgements.

In *Dyer v Dorset CC* (1988), it held that the curtilage is a small area forming part and parcel of the house or building which it contained or to which it was attached.

McAlpine v SSE (1995) indicated amongst other things that curtilage is a small area about a building, that the curtilage land must be intimately associated with the building, and that the size of the area of ground is a matter of fact and degree.

More recently, *Blackbushe Airport Ltd v Hampshire County Council, R (On the Application of) & Ors* [2021] EWCA Civ 398 has considered matters of curtilage.

The case concerned 115 acres of land which was registered with Hampshire County Council as common land. The Appellant, Blackbushe Airport Ltd, are owners of the airport and made an application to the Local Authority for the land to be deregistered as common land. The matter was referred to the Secretary of State for determination in which a public inquiry was held and the Inspector subsequently allowed the deregistration of the land.

The Inspector's decision was quashed by the Court at first instance and the question before the Court of Appeal was whether the operational part of an airport was "within the curtilage" of a two storey terminal building, which serves as the airport's operational hub.

The Court held that 'curtilage' is to be given its ordinary and natural meaning and that 'the curtilage of a building' requires the land in question to be part and parcel of the building to which it relates. The Inspector had applied the wrong test in asking whether the land and building formed an integral part of the same unit when he should have instead considered the land was 'part and parcel of the building'.

The Court considered there to be a common sense conclusion in that an extensive area of operational airfield cannot be described as falling within the curtilage of a relatively small terminal building and therefore the land should not have been deregistered.

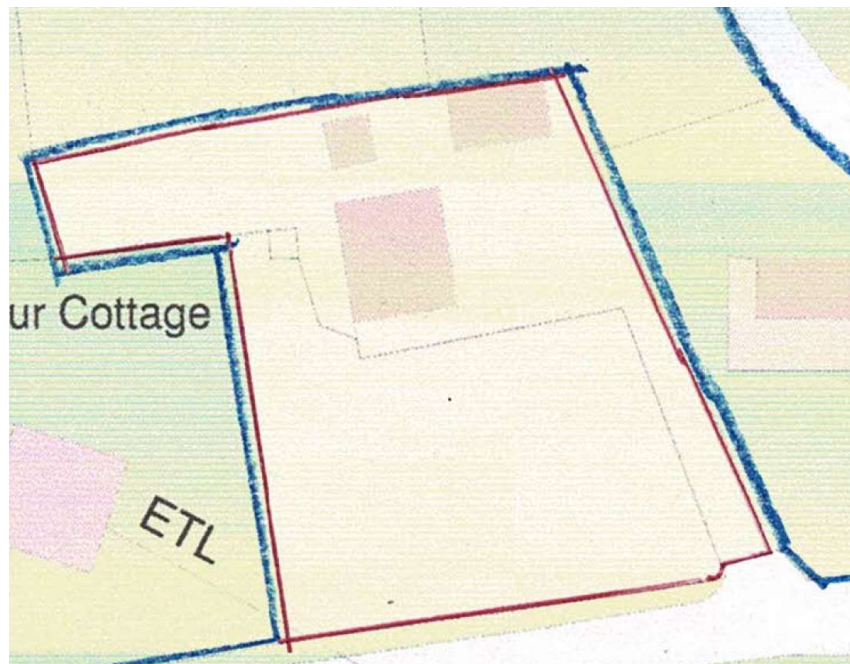
The Court held that the phrase “the curtilage of the building” requires the land in question to form part and parcel of the building to which it is related. The correct question is whether the land falls within the curtilage of the building, not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, or whether the building forms part and parcel of some unit which includes the land. The land must form part and parcel of the building, not part and parcel with the building.

Having regard to the above case law, whilst it is accepted that the site falls within the same planning unit as the main residential dwellinghouse, it does not necessarily follow that the site falls within its domestic curtilage, which as set out above, is a matter of planning judgement having regard to the individual characteristics of the site.

Turning to the specifics of the case, the Location Plans submitted with the application shows the application site (red edge) to extend northwards from the boundary with the Peak Forest Tramway.

However, upon closer inspection, the Plan shows a very distinct line that separates the internal access, the main residential property, and associated areas of hard standing to the east, west and north of the house, from a separate parcel of land to the south.

Whilst it is not disputed that the site contained within the red edge is owned by the applicant, it does not automatically follow that all of this land amounts to residential curtilage, which is a matter of planning judgement based on the individual characteristics of the site.



The below photograph is taken from the entrance to the site looking north-westwards and shows the site and existing structure within the context of the dwellinghouse,

and shows that a large garden bounded by a dry stone wall to the east, and a low timber fence to the south, is clearly separate from the area of land associated with the development subject of this application.



The physical separation between the area of land that accommodates the 'annex', by virtue of the boundary fence and wall, and the distinct change in character between the maintained garden and more rugged longer grass, and additional hard standing, leads Officers to conclude that as a matter of fact and degree, the area of land that accommodates the 'annex' is not closely or intimately associated with the residential dwellinghouse and is not 'part and parcel' with the dwellinghouse.

As such, notwithstanding the fact that the annex, and engineering operation in the form of hard standing to facilitate its siting, both amount to operational development, the area of land in question does not, as a matter of planning judgement, fall within the domestic curtilage of Harpur Cottage - irrespective of whether it lies within the same planning unit and is owned by the applicant – and as such, this area of land does not benefit from any permitted development rights under Schedule 2, Part 1, Class E of the GPDO.

In any event, owing to the fact that the site is situated forward of the principal elevation of the main dwellinghouse, any outbuilding, irrespective of whether or not it complies with the relevant parameters contained within Class E (e.g. height and floor area), would fail to comply with such permitted development rights.

In conclusion, after finding that the annex comprises operational development, such development does not benefit from permitted development rights, and thus requires full planning permission.

CONCLUSION / PLANNING BALANCE

For the reasons outlined within the body of this report, the Local Planning Authority, based on the specific facts of the case and as a matter of planning judgement, reject the case put forward by the applicant that the annex falls within the parameters of the Caravan Act and, together with the hard standing used to facilitate the annex that constitutes an engineering operation, amounts to operational development, that lies outside of the residential curtilage and forward of the principal elevation of the main dwellinghouse.

As such, the development as described and as observed on site requires planning permission and as a consequence a Certificate of Lawful Development cannot be granted, and thus the application is recommended for refusal.

OFFICER RECOMMENDATION : Refuse

Case Officer: James Stannard

Recommendation Date: 21st November 2024

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council