

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	16.8.19
Planning Development Manager authorisation:	TF	16/8/2019
Admin checks / despatch completed	Yue	16/08/19.
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SB	16/08/19.

Application: 19/00924/LUPROP

Town / Parish: Ramsey & Parkeston Parish Council

Applicant: Mr Brian Thomas

Development: Proposed siting of a caravan within the residential curtilage of the existing property known as Cherries for purposes incidental to the dwelling.

1. Town / Parish Council

No comments received

2. Consultation Responses

No comments received

3. Planning History

04/02057/OUT	Proposed detached bungalow	Refused	09.12.2004
15/00827/FUL	Proposed new bungalow in front garden.	Approved	24.08.2015
19/00837/FUL	Proposed rear and side extensions and alterations to the roof to create new first floor.	Approved	09.08.2019
19/00924/LUPRO P	Proposed siting of a caravan within the residential curtilage of the existing property known as Cherries for purposes incidental to the dwelling.	Current	

4. Relevant Policies / Government Guidance

Section 55 of the Town and Country Planning Act
 Section 192(2) of the Town and Country Planning Act 1990
 Caravan Sites and Control of Development Act 1960
 Caravan Sites Act 1968

Status of the Local Plan

N/A

5. Officer Appraisal (including Site Description and Proposal)

Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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. In any other case they shall refuse the application. Applying the terms of Section 192(2) of the 1990 Act to the appeal proposal, the Council has determined the application having regard to section 55 of the 1990 Act.

Section 29 of the Caravan Sites and Control of Development Act 1960 defines a caravan as meaning "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"

In regards to twin-units, the Caravan Sites Act 1968, part 3, section 13 states

- (1) 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.

Drawing CHCO125HW-CA10A confirms that the twin unit would be constructed on site; there is nothing within the application which infers that it would not be possible to move the combined units by road once assembled. **The proposal complies with the statutory definition of a caravan.**

- (2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely -
 - (a) length (exclusive of any drawbar): 20metres
 - (b) width: 6.8metres
 - (c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 3.05metres.

Drawing CHCO125HW-CA10A shows that the length of the combined unit would be 13.7m, 6.8m wide and have an overall height of living accommodation which wouldn't exceed 3.05metres. **The proposal complies with the statutory definitions of a caravan given in the relevant legislation.**

There are some instances where the stationing of a caravan will not involve development. Under section 55(2)(d) of the 1990 Act, use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such, does not involve development for the purposes of the Act. The issues to be determined are therefore whether the siting is with the curtilage of a dwelling house and whether the caravan would be used for a purpose incidental to the enjoyment of the dwelling house.

Curtilage

Permitted development rights apply within lawful curtilages of domestic or commercial and employment premises and therefore definition is of critical importance in determining whether planning permission is required for development. In most cases, the definition of a curtilage does not cause much controversy. This is because, although ownership is not on its own a determining factor, the boundary of a private garden or the extent of the land surrounding business premises is

normally defined on the ground by some physical features and by function as a matter of fact and degree. A number of court cases have cast some light on the meaning of 'curtilage'. In *Dancey & Co v SoS & Lewes DC 1980* the basic premise that curtilage definition is essentially a matter of fact and degree was established. In *Attorney-General ex.rel. Sutcliffe, Rouse & Hughes v Calderdale BC 1983* the Court of Appeal accepted that three factors had to be taken into account in determining what constituted a curtilage a) the physical layout of the building and structure, b) ownership past and present, and c) use and function past and present.

The Court of Appeal case, *Dyer v Dorset DC 1988* defined a curtilage as a small area forming part or parcel with the house or building which it contained and to which it was attached. It was a matter of fact and degree. One of the appeal judges endorsed, as adequate for most present day purposes, the Oxford English Dictionary definition of curtilages. "A small court, yard, garth or piece of land attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law: the area attached to and containing a dwellinghouse and its outbuildings".

Historic maps, circa 2001, show the site with a very different form than that presented today. The extent of the dwelling's curtilage at the north-east boundary terminated approximately 24m from the dwelling. Photographs show that a dense, established, row of trees delineated this boundary from open fields beyond and no pathway existed to serve these areas. In the refusal of the 2004 application for a new dwelling forward of The Cherries both the Local Planning Authority and the Appeal inspector make reference to "north-east of the curtilage of 'Cherries' is agricultural in character and "agricultural land to the north east". **The proposal fails to comply as evidence exists that the proposed location of the caravan would not be within the original residential curtilage.**

The following Appeal cases which are relevant to the circumstances of this site are extracted here:-

- An inspector denied a certificate of lawful use or development for a bird cage at a dwelling in Dartmoor national park 01/11/2018 DCS No 400-020-209 after deciding the site was not residential curtilage. The occupiers of a barn conversion wished to construct a wooden cage to keep birds for their own enjoyment, which fell within the size limitations of Class E of the GPDO. The planning authority disputed that the land being used as garden land fell within the curtilage of the dwelling. Reviewing case law and having careful regard to the relationship of the land on which the bird cage would be sited to the dwelling, the inspector reached the decision that he agreed with the view of the authority. Photographic evidence confirmed that a hedge separating the land in question from an area more intimately and historically associated with the barn, had been removed. Deciding whether the situation now existing constituted an enlarged curtilage, the inspector noted the area of land on which the birdcage was proposed extended downwards for some distance away from the barn and with views obscured by the remains of the hedge. He concluded this degree of separation meant that the land was not intrinsically interconnected with the barn and was not residential curtilage. As such, the bird cage would be positioned outside of residential curtilage and not permitted development and the planning authority's refusal to grant a LDC was well-founded and the inspector dismissed the appeal.
- An enforcement notice alleged the erection of stables and kennels on land by a cottage. It was argued that the land fell within the curtilage of the cottage. An inspector noted *Dyer* and *McAlpine*, to conclude that a curtilage was a small area and had to have intimate association with land that was within a curtilage. The land seemed to have been originally a paddock, probably in shared use with the adjoining house, and such land could not be said to be within the curtilage of either dwelling. The notice was upheld, see Lichfield 29/04/1999 DCS No 050-050-691.
- Enforcement action was taken with regard to structures erected on a plot alleged to be within the curtilage of a dwelling. An inspector felt that the paddock land in question was distinguishable from the domestic garden defined by walls and fences. He did not consider that any reasonable person viewing the paddock and other land outside the garden would regard the garden and the paddock as a single enclosure, see Spelthorne 06/03/1995 DCS No 034-971-839.

Incidental

In general terms the use of a caravan in a residential curtilage for “purposes incidental to the enjoyment of the dwellinghouse as such” falls within the primary use of the dwelling, so it is excluded from the definition of development. The term ‘incidental to the enjoyment of the dwellinghouse’ has been found in planning legislation since the inception of the modern system of development control in 1948. Development within the curtilage of a dwellinghouse for any building, enclosure, swimming pool or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, is stated to be permitted development provided that certain criteria relating to size and location are complied with.

For instance, in *Whitehead v SOS & Mole Valley DC* 10/7/1991 it was intimated that semi-independent housekeeper’s accommodation in a barn lying within the extensive curtilage of a dwelling, could be incidental to the enjoyment of that dwelling and no planning permission would be required. The unit would be sited adjacent the north-east boundary, approximately 36m from the main dwellinghouse; outside what the Local Planning Authority deem to be the original curtilage. The area in question appears to have scope for being accessed separately. **The proposal fails to comply as the purpose of the unit cannot be considered to be incidental to the enjoyment of the dwellinghouse as such.**

6. Recommendation

Lawful Use/development Refused

7. Conditions / Reasons for Refusal

The application seeks confirmation that a proposed twin-caravan unit would be lawful. The land to which this proposal relates is understood not to form part of the original curtilage of the dwelling. The application forms state that the proposed caravan would be used for purposes incidental of the dwellinghouse and suggest that the Lawful Development Certificate should be granted because the development falls within lawful development. No further evidence or justification has been provided.

Consequently, it is concluded that the site in question does not benefit from any permitted development rights and the proposed development therefore does not constitute permitted development by virtue of the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

8. Informatives

n/a

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO