

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	11 <sup>th</sup> Nov 2019
Planning Development Manager authorisation:	AN	12/11/2019
Admin checks / despatch completed	CC	12.11.2019
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SB	12/11/2019

**Application:** 19/01393/LUPROP **Town / Parish:** Ramsey & Parkeston Parish Council

**Applicant:** Mr Brian Thomas

**Address:** Cherries The Street Ramsey

**Development:** Proposed siting of a caravan within the residential curtilage of the existing property known as Cherries for purposes incidental to the dwelling and new fencing to replace existing garden gates.

### 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/LUPROP	Proposed siting of a caravan within the residential curtilage of the existing property known as Cherries for purposes incidental to the dwelling.	Refused	16.08.2019
19/01393/LUPROP	Proposed siting of a caravan within the residential curtilage of the existing property known as Cherries for purposes incidental to the dwelling and new fencing to replace existing garden gates.	Current	
19/01423/LUPROP	Proposed siting of a caravan within the residential curtilage of the existing property known as Cherries for residential uses as	Current	



part of existing dwelling and new fencing to replace existing garden gates.

19/01607/FUL

Swimming pool including associated raised decking, fencing, plant equipment shed, and retracting canopy over pool.

Current

#### **4. Relevant Policies / Government Guidance**

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

#### **5. Officer Appraisal (including Site Description and Proposal)**

A previous Lawful Development Certificate (19/00924/LUPROP) was refused on 16<sup>th</sup> August 2019 on the grounds that "The land to which this proposal relates is understood not to form part of the original curtilage of the dwelling; 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." The current submission proposes an alternative location for the unit.

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-CA10B 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-CA10B shows that the length of the combined unit would be 13.7m, 6.7m 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.

Evidence is available to the Local Planning Authority in the form of historic planning applications that substantiates the extent of the domestic curtilage as shown on drawing number CO125HW\_CBP1.4.

### 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.

In accordance with Williams v Minister of Housing and Local Government 1967 stating that an incidental use was an incident in the life of a planning unit and therefore in accordance with Wood v Minister of Housing 1973, what was built under a development order became part of the existing planning unit and could have the same character as to be found within the planning unit as a whole. Therefore ancillary residential use would be classed as being incidental to the lawful use of the whole planning unit as a dwellinghouse.

The Town and Country Planning (General Permitted Development) (England) Order 2015, Part 2, Class A

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development is not permitted:-

A.1 Development is not permitted by Class A if-

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed –



- (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;
- (ii) in any other case, 1 metre above ground level

Not applicable; the gate, fence, wall or means of enclosure erected or constructed is not adjacent to a highway used by vehicular traffic. **The proposal complies.**

- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level.

At 1.8m, the height of any other gate, fence, wall or means of enclosure erected or constructed would not exceed 2 metres above ground level. **The proposal complies.**

- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater;

The height of any gate, fence, wall or other means of enclosure maintained, improved or altered would not, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater. **The proposal complies.**

- (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

It would not involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building. **The proposal complies.**

## 6. Recommendation

Permitted development

## 7. Conditions / Reasons for Refusal

- 1 In regards to the siting of a caravan, 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.
- 2 The proposed replacement of the existing garden gates constitutes Permitted Development by virtue of the provisions of Schedule 2, Part 2 Classes A of the Town & Country planning (General Permitted Development) (England) Order 2015 (as amended).

## 8. Informatives

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