

LDC (Proposed) Report		Application number	2023/4907/P
Officer		Expiry date	
Brendan Versluys		12/01/2024	
Application Address		Authorised Officer Signature	
38 - 40 Windmill Street London W1T 2BE			
Conservation Area		Article 4	
Charlotte Street		Article 4 Direction (basements) Article 4 Direction (land use)	
Proposal			
Siting of a caravan for use, incidental to the lawful residential use of the land, at the fourth floor.			
Recommendation:		Grant Certificate of Lawfulness	
Introduction			
<p>The application site accommodates a six-storey building (plus basement level) located on the northern side of Windmill Street. The property located with the Charlotte's Street Conservation Area, and the host building is not described as either a positive or negative contributor.</p> <p>The officer's report for planning application 2016/0397/P describes the building as having retail space at ground floor level with vacant B8 (Storage or distribution) space on the first and second floors, and office space at the third floor. The existing ground floor retail unit is understood to be vacant.</p> <p>The fourth and fifth floors are each occupied by a flat. The fourth floor includes a roof terrace at the front elevation.</p> <p>An image of the application site as viewed from the intersection of Whitfield Street and Windmill Street is included in Figure 1 below.</p>			
Proposal			
<p>The applicant seeks a certificate of lawfulness for a use for the siting of a caravan at the fourth floor, on the terrace, ancillary to the use of the existing fourth floor flat.</p> <p>The caravan would be located on the fourth-floor terrace and would be accessed from the fourth floor flat.</p> <p>No details of the design and form of the caravan have been supplied.</p>			



Figure 1: The application site (centre) as viewed from the intersection of Whitfield Street and Windmill Street. The proposed caravan would be set behind the frosted glass balustrade.

Relevant planning history:

2010/5167/P - Change of use of third floor offices (class B1a) and vacant first and second floors (Class B8) to create 6x two-bedroom flats (class C3), including rear extensions at first, second, third and fourth floors and associated external alterations. **Granted Subject to a Section 106 Legal Agreement 05/05/2011.**

2016/0397/P - Change of use of third floor offices (class B1a) and vacant first and second floors (Class B8) to create 3x three bedroom flats. **Granted Subject to a Section 106 Legal Agreement 22/06/2017.**

Assessment:

In an application for a lawful development certificate, the onus is on the applicant to demonstrate, on the balance of probability, that the proposed development is lawful.

The definition of 'development' and 'new development' is defined by the Town and Country Planning Act 1990, section 55, as follows:

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.

The scope of "development" is therefore broadly split into two limbs – operational development, and material changes of use.

This application seeks determination of the second limb only – in other words, the ability to use the terrace to site a “caravan” for purposes ancillary to the residential use. No plans or specifications of the proposed caravan have been provided. The application does not seek a determination on any operational development under the first limb, or whether any particular structure is a “caravan”. Therefore, whether a structure is an operational development masquerading as a caravan is irrelevant to this certificate. It is submitted on the assumption that any “caravan” is not operational development – and that would need to be a separate determination of fact.

The definition of a caravan in law is defined by the Caravan Sites and Control of Development Act 1960, Section 29, as follows:

unless the context otherwise requires — “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, 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.*

Section 29 of the Caravan Sites Act 1968 states that the structure must be physically capable of being moved from one place to another by road and that the twin unit must be no more than 20 metres long, 6.80 metres wide and the living accommodation no more than 3.096 metres high.

A structure that may, on the face of it, comply with the definition of “caravan” is still capable of constituting operational development under the Planning Act. In *Measor v SSETR & Tunbridge Wells DC [1999] JPL 182* the Judge expressed caution in holding that a structure that met the S29(1) / S13(1) definition of a “caravan” could never be operational development for the purposes of planning law.

Although the use of the terrace for a purpose incidental to the enjoyment of the residential unit would not be development (by virtue of S55(2)(d) of the Planning Act), this does not mean that a caravan could in fact be sited there in principle (unless it was not operational development assessed under the tests set out in *Skerrits*).

The definition of “caravan” only applies “unless the context otherwise requires”. The context in this case is a roof in central London. This context is clearly not consistent with the intended legal or normal everyday definition of a “caravan”.

In this case, the use of the terrace for purposes incidental to the dwelling is lawful. However, this includes no determination of lawfulness as to any future physical structure that may accommodate that use. The original application used the word “ancillary” but the council is issuing the certificate with an amended description using “incidental” as this reflects the provisions in S55(2)(d).

3. Recommendations

3.1. Grant Lawful Development Certificate for the following reason:

1. In this case, the use of the terrace for purposes incidental to the dwelling is lawful. However, this includes no determination of lawfulness as to any future physical structure that may accommodate that use.