Item: **05**

Reference: **11/00389/CLU**

Applicant: **Mr & Mrs S Ansar**

Location: **The Fishing Lodge Wallace Drive Groby**

Proposal: **LAWFUL DEVELOPMENT CERTIFICATE FOR EXISTING USE OF THE FISHING LODGE AS A DWELLING**

Target Date: **22 July 2011**

Introduction:-

This application is to be considered at Planning Committee in accordance with the Scheme of Delegation, at the request of a local member.

Application Proposal

The current application is not a planning application. The application is for a Certificate of Lawful Proposed Use meaning that the application must be considered purely on the basis of evidence and law and not the planning merits. The application seeks to determine whether, considering the facts of the case and the relevant planning law, the proposal would be a lawful use and thus not require planning permission.
The application is for a lawful development certificate for the existing use of the 'Fishing Lodge' as a dwelling. Supporting documentation has been submitted by the applicant to support his case.

Annexe 8 of Circular 10/97 gives guidance to Local Planning Authorities on the consideration of applications for such certificates to enable owners to ascertain whether specific uses are or would be lawful. The Committee is not therefore required to make a planning judgement on the merits of the proposed use.

The Site and Surrounding Area

The site comprises an area of land to the north of Markfield Road, Groby. The site is accessed via Wallace Drive and is situated at the bottom of a 115 meter driveway. The site is surrounded by fields, some densely wooded and is not visible from any public vantage point. The buildings on site comprise 'The Bungalow' which has recently undergone extension and' the Fishing Lodge'. The buildings are situated either side of the entrance to the site, opposite one another.

Technical Document submitted with application

Various supporting documents have been submitted with the application. These include the following:-

a) A declaration from the owners of the site confirming the sites use. This states that the 'Fishing Lodge' has been occupied as the principal dwelling since March 2001 and the 'The Bungalow' has been stood empty
b) Historical evidence outlining the buildings on site

c) Property details from when the site was for sale
d) Photographs of the 'Fishing Lodge'
e) Historic Council Tax bills for the site
f) Valuation details from the Valuations Office for 'The Annex'
g) BT phone bills for the 'Fishing Lodge'
h) Poll cards addressed to the 'Fishing Lodge'
i) Receipts from purchases brought by the applicants addressed to the 'Fishing Lodge'
j) Calor gas bills addressed to the 'Fishing Lodge'
k) Declarations from the family solicitor and a structural surveyor confirming the use of the 'Fishing Lodge' as a dwelling
l) A letter from Hinckley and Bosworth Council Tax department deleting the 'Fishing Lodge' from the valuations list as in their opinion it no longer comprised a dwelling.

History:-

06/00327/CLU	Certificate of Lawful Existing Use of outbuilding known as the Fishing Lodge as a single dwelling house	Refused	18.05.06
05/00253/UNUSE	Unauthorised change of use of the Fishing Lodge to residential use not ancillary to the existing dwellinghouse. Enforcement Notice Quashed	Appeal allowed	17.07.07
04/01072/FUL	Extensions and alterations to dwelling	Approved	22.10.04
01/00414/FUL	Extensions to dwelling	Withdrawn	16.10.01
87/00991/4	Agricultural fish farm with mobile home	Refused	22.12.87



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Consultations:-

The purpose of consultation in the case of Certificates of Existing Lawful Use is to offer neighbours of the site, and the local Parish Council an opportunity to provide any further evidence which may aid decision making. It does not present an opportunity to comment upon the planning merits of the case.

A letter has been received from Groby Parish Council. This suggests that applicants should not be occupying the 'Fishing Lodge' as this was refused residential planning permission. It questions why this type of application is being applied for, given the recent appeal decision relating to the site. Finally, a formal request is made that this application be determined by the Planning Committee.

Policy:-

National Policy Guidance

Section 191 of the Town and Country Planning Act (1990) Certificate of lawfulness of existing use or development.

This is applied in the following cases; If any person wishes to ascertain whether:-

a) any existing use of buildings or other land is lawful
b) any operations which have been carried out in, on, over or under land are lawful or
c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make

an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

For the purposes of this Act uses and operations are lawful at any time if:-

a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and
b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if:-

a) the time for taking enforcement action in respect of the failure has then expired, and
b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

A certificate under this section shall:-

a) specify the land to which it relates
b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class)
c) give the reasons for determining the use, operations or other matter to be lawful, and
d) specify the date of the application for the certificate.

The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Appraisal:-

When appraising this type of application the following points are considered:-

a) There must be continuous use
b) The onus of proof is on the applicants
c) The test is the balance of probability
d) The applicant's evidence must be sufficiently precise and unambiguous.

Background

On 9 November 2006 an enforcement notice was served on the application site. The breach of planning control alleged within the notice was the unauthorised change of use of the Fishing Lodge to a residential use not ancillary to the existing dwelling

house. This notice was subsequently appealed under appeal reference APP/K2420/C/06/2033424.

On the 18 May 2006 an application for a Certificate of Lawful Existing use was refused. This was for the lawful existing use of an outbuilding know as the 'Fishing Lodge' as a single dwelling (06/00327/CLU). This refusal was subsequently appealed under appeal reference APP/K2420/X/06/2030910.

The inspector considered these two appeals jointly.

In respect of the appeal relating to the enforcement notice, the inspector considered that when the Fishing Lodge began to be used as a dwelling in March 2001 there was no material change of use. The focus of the lawful single dwellinghouse simply shifted from one building (the bungalow) to another (the fishing lodge) within the same planning unit. He said that a separate unit of occupation is created when part of the original unit is occupied as a separate unit. In this case the bungalow was never occupied separately from the Fishing Lodge. The inspector deemed that a material change of use would only occur when the bungalow and the fishing lodge were both occupied at the same time as separate dwellings. The inspector concluded that the change of use of the Fishing Lodge to residential use not ancillary to the use as a dwelling of the bungalow did not involve a material change of use and thus did not constitute a breach of planning control. Accordingly the appeal was allowed and the enforcement notice was quashed.

In respect of the appeal relating to the Certificate of Lawful Use (which is key to the recommendation in this report) the inspector concluded that the appeal site comprised a single planning unit the lawful use of which was as a single dwellinghouse. What was sought however was something quite different, a certificate of lawfulness in respect of a particular building on the appeal site (the Fishing Lodge). This would only be appropriate if the appeal site comprised two planning units (one for the bungalow and one for the lodge) each with a lawful use as a single dwelling. But this was not the case. He found that the refusal of a certificate of lawful single dwellinghouse use in respect of the Fishing Lodge was well-founded, and he dismissed the appeal.

The current application offers nothing new to the information provided, and arguments advanced, by the applicants in relation to the appeal. The applicants, in their respective statutory declarations dated 6 May 2011, state that they have owned the lodge since 2000, there are two buildings on the site, they moved into the Lodge in March 2001 and have occupied it as their principal home without interruption since then and the Bungalow has stood empty and unused since that date.

The application site remains as one planning unit, on which can be a single lawful dwelling house. The applicants have clearly stated that there are two buildings on site, but that they have only occupied one – 'The Fishing Lodge' as their principal home since 2001 and that 'The Bungalow' has always stood empty. No activities have taken place which have resulted in the creation of two planning units. No material change of use has taken place of the 'Fishing Lodge' the residential use has simply shifted from 'The Bungalow to the 'Fishing Lodge'. Accordingly, the application for a Certificate of Existing Lawful Use will be recommended for refusal.

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

Reasons:-

1 The application site comprises a single planning unit the lawful use of which is as a single dwellinghouse. What is sought however is something quite different, a certificate of lawfulness in respect of a particular building on the application site (the Fishing Lodge). This would only be appropriate if the application site comprised two planning units (one for the bungalow and one for the lodge)

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