

Delegated Report

Planning Ref: 25/00185/CLE

Applicant: Mr A Benney

Ward: Cadeby Carlton M Bosworth & Shackerstone



Hinckley & Bosworth
Borough Council

Site: Tack Rooms, Help Out Mill, Shackerstone Lane, Nuneaton

Proposal: Certificate of existing lawful development to seek approval for additional development, alterations, and conversion of outbuildings to two additional dwellings, relating to planning permissions 04/01507/FUL and 04/01508/LBC

1. Recommendations

- 1.1. **Grant Certificate of Lawfulness** for additional development, alterations, and conversion of outbuildings to two additional dwellings, relating to planning permissions 04/01507/FUL and 04/01508/LBC

2. Description of application for existing use

- 2.1. The application seeks a certificate of lawful existing use for additional development and alterations associated with planning permissions 04/01507/FUL and 04/01508/LBC, which was granted permission for a Barn conversion and extension to form a dwelling, doctor's consultancy room studio and retention of implement store.
- 2.2. The application is supported by the following documents:
- Site Location Plan
 - Approved elevations, floor plans and sections
 - Approved window and door details
 - Email from HBBC Conservation Officer to Applicant

3. Description of the site and surrounding area

- 3.1. The site relates to a collection of buildings including a Mill, house, granary, and outbuildings, most of which were built in the early 20th Century. The site is located approximately 1km north of Shackerstone, accessed via a long single lane track via Main Street. The buildings are Grade II* listed.
- 3.2. Relevant planning history
- 04/01507/FUL (04/01508/LBC) – Barn conversion and extension to form dwelling, doctor's consultancy room studio and retention of implement store - Approved - 12.05.05.
 - 99/00568/LBC – Change of use from store to dwelling. Permitted – 05.11.1999.
 - **Various other historic application relating to conversions of stables and redundant farm buildings to offices and restaurant.**

4. Publicity

- 4.1. No publicity is required, and no comments have been received.

5. Consultation

- 5.1. No consultation is required for this type of application.

6. Legislation and Guidance

- 6.1. The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning Act (TCPA) 1990 (Section 191) as amended by Section 10 of the Planning Compensation Act 1991 provide advice and guidance in respect of applications for certificates of lawfulness of existing or proposed use or development.
- 6.2. Section 191 of the Town and Country Planning Act 1990 (as amended) provides that if a person wishes to ascertain whether:- a) any existing use of land or buildings is lawful, then he/she can apply to the local planning authority for a certificate to that effect.
- 6.3. Uses are lawful at any time if no enforcement action may be taken by the Council, in the present case this means that the applicant has to show that the use claimed has been continuous for a period of at least ten years back from the date of the application.
- 6.4. The burden of proof is on the applicant and the relevant test is the 'balance of probability'. The applicant's evidence in support of the application must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 6.5. In applications such as this, if the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 6.6. It is against this legislative framework that the application is assessed.

7. Appraisal

- 7.1. The key issues are whether the additional development and alterations to, and uses of the buildings took place at least 10 years before this application was submitted.
- 7.2. To ensure the development is lawful and in compliance with both consents the development should have been implemented in accordance with the details provided on the approved plan reference 04/01896/04C. The applicant confirmed verbally that the building operations to implement the development were undertaken during the period 2005-2007, but that some additional development and alterations to the approved plan had occurred.
- 7.3. Following site visits by the case officer and Conservation Officer, the following additional development and alterations to the approved plans associated with 04/01507/FUL and 04/01508/LBC are as follows:
 - Front elevation B-B - Insertion of an additional window at first floor level within the new two storey extension - The new storey extension being constructed with a marginally higher roof eaves and ridge level - Reduced width of glazed doors and screens to the inner hall on the converted single storey range, with two sections of brick infill flanking the central entrance door

- Rear elevation - Installation of two flues from the roof plane of the converted single storey range - Insertion of an additional small window on the converted single storey range
- Side elevation facing garden - Insertion of two roof lights within the new single storey extension
- Other courtyard elevation - Insertion of a door and window at ground floor level within the new two storey extension (it is noted that the door is shown on the proposed floor plan – so it considered that this is not an additional work but instead a drawing error)
- Works affecting all (or majority of) elevations - Erection of a single storey ancillary building (constructed of brick and tile and partially timber clad), attached to the new single storey extension. A roof light has also been inserted on the rear elevation - Erection of two chimneys at ridge level within the converted single storey range
- Number of residential units - The approved plan was for 1.no 4 bedroom residential unit to be created with the conversion. However, Council tax records and the Council's Land and Property Gazetteer indicates that there are 3.no residential units within the converted and extended buildings, namely:

o The Tack Rooms, Help Out Mill, Shackerstone, CV13 0BT (came into effect for Council Tax purposes on 29 September 2007)

o The Cart House, Help Out Mill, Shackerstone, CV13 0BT (came into effect for Council Tax purposes on 8 September 2007)

o The Courtyard Studio, Help Out Mill, Shackerstone, CV13 0BT (came into effect for Council Tax purposes on 14 January 2012)

- 7.4. As evidence (including verbal accounts and the Council Tax records) demonstrate that the approved and additional development, as listed above, was substantially completed by 2007 and could be occupied for residential purposes between 2007-2012. As this is a period of greater than 10 years, the development is now immune from enforcement action. The local planning authority is therefore unable to act regarding breaches of planning control relating to the application references 04/01507/FUL.
- 7.5. There is no such time limit on possible enforcement action to address unauthorised works undertaken to a listed building. However, it is the judgement of officers (including the Conservation Officer) that the additional development and alterations beyond the works consented by 04/01508/LBC, as listed above, have not affected the special interest of the listed building Help Out Mill. As such it is considered that no retrospective listed building consent is required to regularise the additional development and alterations.
- 7.6. The Council has no evidence to counter any of the information that has been submitted by the applicant. No evidence has been submitted by local residents or the Parish Council to counter the information submitted. Therefore when assessing the submitted evidence, the local planning authority needs to be mindful of the Planning Practice Guidance (Lawful Development Certificates) paragraph 6, which states; in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided

the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

- 7.7. Whilst the evidence submitted is limited to approved plans, Officer photographs and Council Tax records, it is considered on the balance of probability that the evidence before the LLPA is sufficient and precise. It is a case where the Council's own evidence weighs highly in favour of the applicants claims and in conclusion and on the balance of probability, the use of the application site can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

8. Equality implications

- 8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 8.3 There are no known equality implications arising directly from this development.

- 8.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

9. Conclusion

- 9.1. The information included in the application for a Certificate of Lawful Existing Use has sufficient evidence to demonstrate that the development and alterations, as well as the occupation of the additional dwellings, took place and have been inhabited for a a continuous period of at least 10 years. On the balance of probability, the additional development and alterations and use of the application site can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

10. Recommendation

- 10.1. It is recommended that a certificate is issued because sufficient evidence presented by the applicant has shown that on the balance of probability, the additional development, alterations, and conversion/occupation of two additional dwellings at Help out Mill has been in situ for an uninterrupted period of at least 10 years and is subsequently immune from any enforcement action.

