DELEGATED REPORT

Recommendation Made: 1 November 2011

Reference:- 11/00730/CLU **Parish:- Newbold Verdon Parish Council**

Applicant:- Mr Stephen Goodman
23 Jubilee Road
Newbold Verdon
Leicester
Leicestershire

Location:- Craigmore Farm Merrylees Road Newbold Heath Newbold Verdon Leicestershire

Proposal:- CERTIFICATE OF LAWFUL PROPOSED DEVELOPMENT FOR A REPLACEMENT DWELLING

Introduction:-

This application seeks a Certificate of Lawful Proposed Development in respect of the former farmhouse at Craigmore Farm, Merrylees Road, Newbold Heath and in particular seeks a Certificate that: i) the rebuilding of any building that was in existence before 1 July 1948 does not constitute development; ii) the existing foundations constitute an already begun development and iii) the site has been used residentially since 1841 and this use has never been voluntarily relinquished. The application seeks to determine whether, considering the facts of the case and the relevant planning law, the proposal to rebuild a dwelling would be a lawful use and thus not require planning permission.

The applicant has submitted a number of documents to support the application. These include a Statement of Lawfulness, DEFRA Code of Good Agricultural Practice together with further Considerations document, five letters of support from third parties, a petition from third parties in support of the application and a copy of a previous planning application form in respect of the site.

The site is located in the countryside approximately 260 metres to the northeast of the rural hamlet of Newbold Heath on the northwest side of Merrylees Road. The site is accessed via a field gate and unmade track. The site (not including the track) measures approximately 1075 square metres. There is an area of concrete within the application site believed to be (by the applicant) the remnant of a former farmyard together with the remains of the brick foundations to the former farmhouse beneath a grassed area. The boundaries to the site are a mix of field hedgerows including two trees within the south east boundary and post and rail fencing. The land immediately surrounding the site is owned by the applicant and includes a number of stables and small barns of timber and corrugated metal sheet construction and a manege. The two fields either side of the access track, are used for growing hay and the keeping and grazing of the applicants horses.

History:-

09/00841/OUT	Erection of One Dwelling	Refused	19.02.10
05/00958/FUL	Construction of Manege	Approved	09.11.05
05/00705/CLU	Certificate of Lawful Existing Use for the Grazing & Stabling of Horses	Approved	31.08.05
85/0722/4	Erection of One Dwelling	Refused	20.08.85.

Consultations:-

No comments have been received in respect of this application from Ward Members

Legislation:-

Town and Country Planning Act 1990

Other Guidance
DOE Circular 10/97 Annex 8

Appraisal:-

The following have been referred to and considered in the assessment of the application:

a) Sections 192, 56,57,114 and Schedules 3 and 4 of the Town and Country Planning Act 1990
b) Copy letters submitted by the Applicant from the following;
i) Mr and Mrs J Bates
ii) Robert Freeman
iii) John Hill
iv) John R Coope
v) Christine Willett
c) Appeal decision reference APP/K2420/A/10/2130705
d) The Applicants supporting papers

Section 192 of Town and Country Planning Act 1990 provides as follows: (1) If any person wishes to ascertain whether- (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, or over or under land, would be lawful, he may make an application for the purpose to the local planning authority (LPA) specifying the land and describing the use or operations in question; (2) If, on an application under this section, the LPA are provided with information satisfying them that the use or operations would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case they shall refuse the application. The burden of proof in such applications is firmly on the applicant (DOE Circular 10/97 Annex 8) and the relevant test is `the balance of probability`

Section 114 of the Town and Country Planning Act 1990 was repealed by the Planning and Compulsory Purchase Act 1991 with effect from July 1991. Reference is made to it in order to clarify the response to the Applicants points. Section 114 applied where, on an application for planning permission to carry out development of any class specified in Part II of Schedule 3, the Secretary of State refused permission. The annotation to the section in the Encyclopaedia of Planning Law states that the purpose of the section can probably only be explained by its history. Under the Town and Country Planning Act 1947, the State nationalised development rights and development values in land, but it provided an enhanced definition of what could be considered to be 'existing use value' of the land. Although planning permission would be required for some of those activities, they were exempt from the liability under the 1947 Act to pay development charge, and, if planning permission was refused, then compensation was payable. Although the development charge has been abolished, the compensation entitlement was preserved by section 114. That compensation entitlement was limited to the activities set out in Part II of Schedule 3 of the Act. The rebuilding activities listed in Part I of Schedule 3 do not qualify for compensation, but a purchase notice may instead be served under section 137 if the land is incapable of reasonably beneficial use in its existing state. Part I of Schedule 3 remains in force, but it relates to compensatory provisions, it is concerned with eligibility for compensation in the circumstances described in the Act. It does not grant permission and it is clear from the wording that the provisions may be applicable when an application for planning permission has been made and refused in the circumstances described.

The letters which the Applicant has submitted all state that the farmhouse was demolished in 1978 and it is understood that the Applicant purchased the property in 2009. No evidence has been submitted in relation to the period between demolition in 1978 and the purchase by the Applicant in 2009.

The Appeal Decision reference APP/K2420/A/10/2130705 dealt with an appeal by the Applicant against a refusal of planning permission by the LPA to rebuild a dwelling on the site of the farmhouse (reference 09/00841/OUT). The inspector dismissed the appeal. The Appeal decision is a material planning consideration and the inspector’s conclusions in relation to the issues being addressed in this application are relevant considerations in reaching a decision. The inspector stated as follows:

a) On his site visit, he saw an area of concrete hard standing which appeared to be the former farmyard together with the remains of the brick foundations to the farmhouse beneath a grassed amenity area.
b) He considered that the lawful use of a building can come to an end by abandonment and he noted that the appellant believed that the National Coal Board (NCB) demolished the farmhouse and all its outbuildings in the 1970s.
c) He found that no dwelling had been on the site for more than 30 years, there had been one application by the NCB to rebuild the house in 1985, which was refused and the Council subsequently defended a purchase notice.

These points go to the earlier comments in relation to the provisions of Schedule 3 in that there has to be a planning application and the refusal of that application led to a purchase notice, i.e. a matter of compensation.

d) The inspector found that former farmhouse had been incapable of use as a dwelling since the time it was demolished in the 1970s and, with the exception of the application by NCB in 1985 there had been no evidence of any intention to continue the residential use of the site
e) He concluded that the NCB by virtue of its actions had abandoned the use of the farmhouse.

The leading authority in relation to whether a particular use has ceased or been abandoned, is the case of Hughes v Secretary of State for the Environment Transport and the Regions and South Holland District Council [2000] EWCA Civ 506. The four relevant criteria to be considered are:

a) the physical condition of the building;
b) the length of time for which the building has not been used for residential purposes;
c) whether it had been used for any other purposes; and
d) the owner's intentions.

As stated earlier, no evidence has been submitted of an intention to continue the use of the farmhouse as a dwelling between 1978 and 2009. Even if the action of NCB in 1985 were considered to demonstrate an intention, which is refuted by the Council, the Court Of Appeal in Hughes said that what matters is the view of `a reasonable man` and the wishes and intentions of the site owner (and this means NCB) are not to be regarded as decisive. In this case an argument that there has been an intention to continue the use as a dwelling is not sustainable on the facts.

Conclusions

Schedule 3 is not considered relevant to the Applicant's arguments for the reasons given above. The evaluation of the application against the four relevant criteria strongly supports the view that the residential use has been abandoned, in that:

a) there is no building against which to assess the physical condition
b) the building, according to the Applicant's own information, was demolished in 1978 and there has been no building on site for more than 30 years
c) there is no evidence of an intention by NCB to continue to use the building as a dwelling
d) the inspector came to the conclusion that the NCB had by its actions abandoned the use of the former farmhouse.

It is considered that the use as a dwelling has been abandoned and that the Applicant has not produced evidence which satisfies the test on the balance of probabilities that the proposed rebuilding would be lawful by virtue of the provisions of section 192. The application for a Certificate should therefore be refused.

RECOMMENDATION:- Refuse to issue a Certificate of Lawful Use

Reason:-

The use of the site as a dwelling has been abandoned and the Applicant has failed to produce evidence which satisfies the test on the balance of probabilities that the proposed rebuilding of the former farmhouse would be lawful by virtue of the provisions of section 192.

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