DELEGATED REPORT

Recommendation Made: 10 May 2010

Reference:- 10/00188/CLU **Parish:- Higham On The Hill Parish Council**

Applicant:- John DeMott
Rowden Cottage
Drive To Rowden House
Fenn Lanes
Fenny Drayton

Location:- Rowden Cottage Drive To Rowden House Fenn Lanes Fenny Drayton Nuneaton

Proposal:- CERTIFICATE OF LAWFUL PROPOSED DEVELOPMENT FOR EXTENSION AND ALTERATIONS TO DWELLING

Introduction:-

This application proposes a certificate of proposed lawful development for an extension to front elevation of this dwelling house.

Planning history

None

Consultations:-

There are no consultations on an application of this type.

The Head of Legal Services has provided a comprehensive response on the definition of a highway under planning legalisation and concludes that the road is a highway and therefore the development is not permitted development and planning permission is required.

Development Plan Policies:-

The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008. (Abbreviated to GPDO).

Appraisal:-

The only issue for consideration here is whether the proposal is permitted development. The application proposes an extension coming forward, beyond the existing wall of the dwelling house fronting Fenn Lane.

The issue is whether Fenn Lane is a highway for the purposes of Part 1, Class A of GPDO.

Fenn Lane is an access drive that serves a small number of dwellings, the application property being one of them. It is not an adopted public highway in terms of Highway legislation. A highway is not formally defined in planning legislation.

The Head of Legal Services conforms that, In accordance with common law usage, a highway includes not only a made-up road but any way over which members of the public have a right to pass and re-pass, including a footpath. From the information to hand, it would seem impossible to prove that the public do not have a right of way over the road and, on the balance of probabilities the road is a highway and that the provisions of the GPDO apply to the proposed development. Accordingly, the development is not permitted development and planning permission is required.

RECOMMENDATION: REFUSE CERTIFICATE OF LAWFUL PROPOSED DEVELOPMENT FOR EXTENSION AND ALTERATIONS TO DWELLING FOR THE FOLLOWING REASON:-

The proposal results in a development that is extending forward of a wall which fronts a highway and therefore does not comply with condition A.1 (d) (i) of The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008. (Abbreviated to GPDO).

Contact Officer:- **James Hicks Ext 5762** **Date Printed: 17 May 2010**