

Delegated Report

Planning Ref: 24/00799/CLE

Applicant: Mr and Mrs B Matthews

Ward: Nuneaton

Site: Keepers Cottage, Shackerstone Lane, Newtown Burgoland, Swepestone, Nuneaton



Hinckley & Bosworth
Borough Council

Proposal: Lawful Development Certificate for existing development of a barn

Recommendations

1.1. Grant Certificate of Lawful Existing Use

Planning application description

- 2.1. This is an application for a Lawful Development Certificate for existing building works to confirm, on the balance of probabilities that the existing barn in question was built more than 4 years ago. The applicant states the works were substantially completed by 01.12.2019.
- 2.2. The following documents/information have been submitted to support the application:
- Site Location Plan
 - Application form & Aerial photo from early 2020
 - Photo of barn being constructed in July 2018
 - Topographical Survey

Description of the site and surrounding area

- 3.1. The dwelling is a two storey red brick cottage, designed with a steeply gabled roof, chimney stacks and brick detailing. There is a stream to the rear of the cottage which features an associated timber footbridge, a barn and a few other smaller outbuildings deeper into the site. The cottage is historically associated with and situated north east of Help Out Mill, between a dismantled railway and a bridle path. It is accessed from Heather Road via Help Out Mill.

Relevant planning history

14/00335/HOU - Extensions and alterations to dwelling - APPROVED - 24 June 2014

80/00809/4 - Extensions to dwelling - APPROVED - 9 June 1980

14/01088/HOU- Extensions and alterations to dwelling- 19 Dec 2014

Publicity

- 5.1. The application is for a Certificate of Lawful Existing building works and no publicity is necessary.

Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary.

Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning Compensation Act 1991, provide advice

and guidance in respect for applications for Certificates of Lawfulness of Existing Use.

- 7.2. Planning Practice Guidance confirms that the applicant is responsible for providing sufficient information to support the application and that such evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Appraisal

- 8.1. The time period for immunity from enforcement action for this breach of planning control is 4 years for the existing building works. As such, the key issue for consideration is whether the building in question have been substantially complete for a period of 4 years from the date of this application.
- 8.2. 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.
- 8.3. It is against this legislative framework that the application is assessed.
- 8.4. The information provided with the applicant is not highly detailed, it initially contained simply an aerial photo from "early 2020" showing a building in situ. Further information has been requested during the application which includes dated photographs of the barn being constructed in July 2018. At this time the barn was verging on substantial completion, however the frontage of the building was yet to be complete. The applicant states it was then substantially completed by 01.12.2019. Whilst the evidence is limited, from reviewing aerial photographs including those dated prior to April 2020 which show the front of the building complete on the balance of probability it can be assumed that the building was substantially constructed more than 4 years. No information has been provided to the Council which contradicts this, nor has officer research found any evidence to the contrary. Therefore the barn associated with the use of the paddock is judged to be lawful and immune from enforcement action. A Certificate of Lawful Existing Use may be granted.

9.0 Equality implications

9.1 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.

9.2 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.

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

9.4 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).

Conclusion

10.1. The information included in the application for a Certificate of Lawful Existing Use has sufficient evidence to demonstrate that the construction of the barn for connection with paddock land was substantially completed over four years ago. On the balance of probabilities, the buildings works can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

Recommendation

11.1 **Grant Certificate of Lawful Existing Use can be issued.**