

Planning Committee – 2 September 2009

Report of the Head of Legal and Democratic Services

Revocation of Certificate of Proposed Lawful Use or Development relating to Development Works to Outbuildings at Higher Mill, Hatch Beauchamp, Somerset, TA3 6AE (“the Site”)

Applicant/Owner: Mr Wayne Collins

Reason for this Report

1. On 22 December 2008 the Council issued a Certificate of Lawfulness for proposed alterations and extension to existing outbuildings at the rear of Higher Mill, Hatch Beauchamp in order to provide garages, a workshop, a log store, a mower store, a study/office and a gym. Subsequently information has come to light which demonstrates that part of the evidence which was submitted in support of the application for a Certificate was false. It is therefore considered that the Certificate should be revoked.

Background

2. On 7 November 2008 the Council received an Application for a Lawful Development Certificate for a Proposed Use or Development (Certificate of Lawfulness) from the Applicant’s Agent, DLP Planning Ltd (DLP).
3. In its covering letter dated 5 November 2008 sent with the Application, DLP submitted that the proposed operational development/building works to the outbuildings is development within the curtilage of the dwelling house, thus constituting permitted development and complying with the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and therefore did not require planning permission.
4. The Council accepted the information contained in the Application as true, that is, that the proposed works to the outbuildings fell within the permitted development rights and the Certificate of Lawfulness was issued on 22 December 2008.
5. Since the Certificate was issued, DLP contacted the Council in March 2009 to say they incorrectly stated in their covering letter of 5 November 2008 that:-

“No part of the buildings will be situated on land forward of a wall forming the principal elevation of the original dwelling house”.

DLP explained it was originally considered that the northwest elevation is the principal elevation of the dwelling house, however, it is the southeast elevation that is in fact the principal elevation, having the front door and main architectural features of the building.

6. Under Section 193(7) of the Town and Country Planning Act 1990, a local authority can revoke a Certificate of Lawfulness if on the Application for the Certificate a statement was made or a document was used which was false in a material way or any material information was withheld.
7. Mrs Judith Jackson, Legal Services Manager at the Council carried out a site visit. As a result of observations made during the site visit it came to the attention of Mrs Jackson that there was another false statement made in the covering letter of 5 November 2008 as follows:-

“The buildings are located within the curtilage of Higher Mill and are required for purposes incidental to the enjoyment of the dwelling house.”

In Mrs Jackson’s opinion, the curtilage of the dwelling house is land around Higher Mill lying to the west of the track/footpath that runs through the original application site and not land lying to the east of the dwelling house.

6. Article 24(12) of the Town and Country Planning (General Development Procedure Order) 1995 requires that prior notice be given to the owner and the occupier of the land and to any other person who will in the local planning authority’s opinion be affected by a Revocation of a Certificate of Lawfulness and invite those parties affected to make representations within 14 days of service of the notice to the local planning authority before revocation of the Certificate.
7. On 18 May 2009 Mrs Jackson wrote to the Owner and to DLP giving them notice that she intended to revoke the Certificate because of the two false statements made in the covering letter dated 5 November 2008 sent by DLP. In her letter, Mrs Jackson invited them to make any representations they wished to make in respect of either or both of the two false statements within 14 days of receipt of her letter.
8. DLP sent a letter dated 30 June 2009 to Mrs Jackson. In their letter, DLP took issue with Mrs Jackson’s statement that there were two false statements made in relation to the application. DLP conceded the statement “No part of the buildings will be situated on

land forward of a wall forming the principal elevation of the original dwelling house” was a false statement and in those circumstances would be happy for the Council to revoke the Certificate.

DLP do not agree that the statement “The buildings are located within the curtilage of Higher Mill and are required for purposes incidental to the enjoyment of the dwelling house” is false. In DLP’s opinion, the Site does fall within the curtilage of the dwelling house.

Legal Implications

9. There is no right of appeal against the Council’s decision to revoke a Certificate of Lawfulness however the validity of the Council’s decision may be challenged by application to the High Court for judicial review.
10. No compensation is payable to the applicant if the Council revokes a Certificate of Lawfulness.

RECOMMENDATION

It is recommended that the Committee confirm that the Certificate of Lawfulness be revoked for the reason that on the Application for the Certificate two false statements were made which were false in a material particular.

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