

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: F/27/18/CLE

LOCATION: Buttercups
Waterbury House
Ford Road Ford

PROPOSAL: Lawful development certificate for the existing demolition of outbuildings.

DESCRIPTION OF APPLICATION

The application essentially seeks to confirm that planning permission F/4/10 has been lawfully commenced on the basis of the demolition which has been undertaken.

DESCRIPTION OF SITE AND SURROUNDINGS

The site has a rural location which is close to the railway line. The former outside shed has been demolished.

RELEVANT SITE HISTORY

REPRESENTATIONS

Representations received:

Ford Parish Council
No Objection

Comments on Representations received:

None

CONSULTATIONS

Consultations responses received:

None

Comments on Consultation responses:

None

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application 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.

PRINCIPLE

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

- (i) What is judged on a balance of probability;
- (ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence; and
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

The relevant legislation is found in:

Section 56 of the Town and Country Planning Act 1990(as amended) ("the Act")

Section 91 of the Act

Section 191 of the Act

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

Section 56(2) to (4) of the Act provides that a planning permission will be commenced within the time limit under Section 91 on the earliest date when a material operation comprised in the permission is carried out and that demolition of a building is a material operation.

CONCLUSIONS

On 25th January 2010 the Council received an application in respect of the erection of demolition of the existing timber building and construction of 4 bed. bungalow style care facility unit for adults with learning difficulties to be used as ancillary accommodation in connection with the main use of the site as a Care Home, which was validated on 4th February 2010.

The application was decided on 6th April 2010 and permission issued.

The permission was conditional and the relevant conditions are:

Condition 1 which states:

The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

Condition 5 which states:

"No constructions works shall be carried out until all buildings and structures on the application site at the date of the permission have been demolished, the debris removed from the site and the site cleared."

There were 3 pre-commencement conditions imposed which were no 3 in relation to Materials; no 4 Landscaping and no 10 Drainage.

None of these conditions have been discharged.

The Applicant has submitted a statutory declaration from the Project Manager for works at the site which is supported by an invoice from Bishops Home Improvements Limited dated 5th September 2011 for demolition of the building and site clearance. Photographs of the timber building are also submitted

The Permission, at Condition 5, required that the existing buildings and structures be demolished, debris removed and the site cleared.

The applicant has submitted photographs and an invoice from the demolition contractors dated 05/09/11.

The evidence submitted is considered to be sufficient to demonstrate commencement of the development approved under references F/19/10 for the purposes of 'Section 56' of the Town and Country Planning Act 1990 (as amended), which states;

"1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated -

- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
- (b) if the development consists of a change in use, at the time when the new use is instituted;
- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

(2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

(3) The provisions referred to in subsection (2) are sections 85(2), 86(6), 87(4), [89,] 91, 92 and 94.

(4) In subsection (2) "material operation" means - (a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building;

(5) In subsection (4)(e) "material development" means any development other than -

- (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted;
- (b) development of a class specified in paragraph 1 or 2 of Schedule 3;
- (c) development of any class prescribed for the purposes of this subsection.

Demolition of the timber building is a material operation within Section 56(2) to (4) of the Act; was carried out in compliance with condition 5 without the Discharge of the Pre-Commencement Conditions (3,5 and 10) and was comprised in the development. Therefore, the Planning Permission F/4/10 has been begun within the three year period running from 6th April 2010 to 5th April 2013.

As such the certificate is recommended for approval.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the time of submission of the application, on 01-12-2018, demolition of the building had taken place and planning permission F/4/10 had lawfully

been implemented.

FIRST SCHEDULE

The provision of the development comprising demolition of existing timber building and construction of 4 bed bungalow style care facility unit for adults with learning difficulties. The unit will be used as ancillary accommodation in connection with the main use of the site as a Care Home in accordance with planning permission F/4/10.

SECOND SCHEDULE

Buttercups, Waterbury House, Ford Road, Ford, BN18 0BH

EXTENT OF USE

Implementation of planning permission F/4/10.



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