

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	MP	25/05/23
Planning Manager / Team Leader authorisation:	AN	30/05/23
Planning Technician final checks and despatch:	CC	31.05.2023

Application: 23/00476/LUEX **Town / Parish:** Beaumont Parish Council

Applicant: Mr David Lowe

Address: The Lodge at The Twiggery Chapel Road

Development: Proposed application for a Certificate of Lawfulness for Existing Use for continued use of property as dwellinghouse.

1. Town / Parish Council

Beaumont Parish Council I am writing in my capacity as Chairman of Beaumont Parish Council regarding the above Appeal. Our Parish Council has considered this planning application and has decided to object to this current proposal on the following grounds;

Concerns over sustainability. Our village has no services, no mains drainage, or any other supportive infrastructure. Public transport to the village is limited.

The proposed build is not in keeping with the development envelope for the village.

It sets a dangerous precedent for other owners of lodges/caravans in the village to seek to have them also given a Certificate of Lawfulness for Existing Use/continued use as a dwelling house and so possibly opening the door, subsequently to seek to build a permanent dwelling on the footprint of the lodge/caravan.

Some of the plot was formerly agricultural/garden land.

There are safety concerns over the access point to the site as the road narrows and is not well sighted in both directions. Many vehicles drive down the road at speeds in excess of the 40mph limit.

The neighbouring plot has been subject to surface water flooding.

2. Consultation Responses

N/A

3. Planning History

00/00475/FUL	Ground floor front and side extensions for use as kitchen/bedroom study/garage/conservatory and alterations to vehicular access	Approved	02.05.2000
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01/00360/FUL	Ground floor side and front	Approved	05.04.2001
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	extension for use as kitchen/diner, bathroom (garage) and conservatory		
10/00865/FUL	Erection of two single garages and repositioning of existing caravan.	Refused	28.09.2010
10/01134/FUL	Change of use from agricultural land to garden.	Approved	16.12.2010
12/60349/HOUEN Q	Erection of wooden building 3600mm x 6100mm as garden storage for ride-on-mower and trailer.		09.08.2012
12/60350/HOUEN Q	To remove a 1830mm x 1220mm shed (wooden) and replace with a wooden 3050mm x 2440mm pent roof shed		09.08.2012
12/60351/HOUEN Q	To erect a wooden summerhouse (3660mm x 5180mm).		09.08.2012
12/00876/FUL	Proposed partial demolition of existing dwelling and erection of two storey extension and first floor extension above remaining residence and a conservatory.	Approved	03.10.2012
12/01158/FUL	Proposed erection of timber summerhouse.	Approved	10.12.2012
13/00476/FUL	Proposed partial demolition of existing dwelling and erection of two storey extension and first floor extension above remaining residence and a conservatory - amendment to approved 12/00876/FUL; 3 no. Velux windows within the rear elevation and a new window added.	Approved	12.06.2013
20/01391/OUT	Removal of lodge and erection of a self build dwelling.	Refused	07.12.2020

4. Relevant Policies / Government Guidance

N/A

Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), together with any neighbourhood plans that have been brought into force.

In relation to housing supply:

The Framework requires Councils boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, to account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible or if housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, Paragraph 11 d) of the Framework requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (what is often termed the 'tilted balance').

The Local Plan fixes the Council's housing requirement at 550 dwellings per annum. On 19 October 2021 the Council's Strategic Housing Land Availability Assessment (SHLAA) updated the housing land supply position. The SHLAA demonstrates in excess of a six-and-a-half-year supply of deliverable housing land. On 14 January 2022 the Government published the Housing Delivery Test (HDT) 2021 measurement. Against a requirement for 1420 homes for 2018-2021, the total number of homes delivered was 2345. The Council's HDT 2021 measurement was therefore 165%. As a result, the 'tilted balance' at paragraph 11 d) of the Framework does not apply to applications for housing.

5. Officer Appraisal

Site Description

The application site is a lodge located at 'The Twiggery', which is on the northern side of Chapel Road within the parish of Beaumont. The wider plot is divided into two distinct sections; to the western side is the host dwelling and a detached garage. The eastern side, the area subject of this application, contains the lodge and a scattering of small domestic outbuildings.

The character of the area can be defined as semi-rural. The site itself is well populated with built form as discussed above, and there is sporadic additional built form along this section of Chapel Road. However, the wider character is far more rural, with large parcels of grassed and agricultural land to all sides.

The site falls outside of a recognised Settlement Development Boundary within the adopted Local Plan 2013-2033.

Description of Proposal

This application seeks the granting of a Lawful Development Certificate to confirm the use of the lodge building as a permanent dwellinghouse for over four years, and therefore being immune from enforcement action.

Time period

In this instance the claimed use for which a Certificate is sought should be in existence as at the date of the application i.e. 5 April 2023 when the application became valid. The claimed use should have been taking place continuously for at least four years prior to that date.

Main Issues

The Planning Practice Guidance explains that the statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act 1990, and that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

The Planning and Compensation Act 1991 (section 171B) sets out the time limits within which local planning authorities can take planning enforcement action against breaches of planning control. In most cases, development becomes immune from enforcement action if no action is taken:

1. within 4 years of substantial completion for a breach of planning control consisting of operational development;
2. within 4 years for an unauthorised change of use to a single dwellinghouse;
3. within 10 years for any other breach of planning control (essentially other changes of use and applicable to this application).

In certain circumstances, the above time-limits do not prevent enforcement action after the relevant dates:

- i) where earlier enforcement action has been taken within the relevant time limit (section 171B(4)(b) of the Town and Country Planning Act 1990);
- ii) where there has been a deliberate concealment of a breach of planning control, local planning authorities can seek a 'planning enforcement order' to allow them to take action after the time limits in section 171B have expired;
- iii) where a person has deliberately concealed a breach of planning control the courts have found that the time limits in section 171B are not engaged until the breach has been discovered.

Sections 191 and 192 of the Town and Country Planning Act 1990 provides for anyone (not just a person with a legal interest in the land) to apply to the local planning authority for a lawful development certificate. A certificate is a statutory document certifying:

- in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or
- in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

Applications for Lawful Development Certificates should include the following information:

- a) whether the application relates to:
 - i. a use
 - ii. a building operation
 - iii. a condition not complied with
- b) the date that the use (or breach of condition) started, or the date on which the building was substantially complete.
- c) any use class the applicant considers to be applicable;
- d) the reasons the applicant thinks they are entitled to a Lawful Development Certificate
- e) any other relevant information.
- f) a plan identifying the land, and.
- g) a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person.

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

- i. proof that any building was 'substantially complete' more than four years before the date of the application; and/or
- ii. proof that any use (or breach of condition) has been carried out continuously for a period of 10 years (four years in the case of a dwelling)

The Submission

The case being made is that the two mobile homes have been connected and made immovable, and then occupied as a separate dwelling for a continuous period of four years.

The submission specifically outlines that, at the time of delivery, the structures were originally two mobile home units. However, since that time works have been undertaken that result in an immovable building, as follows:

- the infilling of the perimeter of the unit down to ground level with breezeblock;
- bracketry installed beneath the unit which embeds into the concrete;
- installation of a fixed veranda; and
- installation of supporting pillars to the underside of the oversail roof.

Photographic evidence for each of the above works has also been provided.

The submission goes on to outline that the applicants reside in the host dwelling, with the applicant's daughter (and her partner and children) residing in the lodge subject of this application since late 2017. Additional evidence to support the case is provided as follows:

- Google Earth image dated September 2017 showing the concrete base laid, as well as a photograph dated 27 August 2017;
- Wallpaper purchased in August 2017, which is on one of the bedrooms in accompanying photographs;
- Evidence of the purchase of two caravan units from Delta Caravans in October 2017, and an undated photograph of them being delivered;
- Message exchanges with Ebay Seller for a static caravan set of steps/veranda dated October 2017;
- Photographs dated October 2017 showing the building fully furnished and habitable;
- Receipt of boiler serviced dated November 2017;
- Receipt for a total of seven radiators purchased in January 2018;
- Documentary evidence dated 17th March 2018 of the unit being occupied and having its own independent address;
- Invoice dated 18th August 2018 from County Broadband;
- An overdue letter received from Marbles dated 25 November 2018 showing Mr Lines being connected to the address;
- A statement from CPS Fuels dated March 2023 showing transactions between October 2018 and October 2022 showing Mr Lines being connected to the address;
- Invoices from County Broadband dated 17 June 2019, 17 November 2020, 18 March 2021, 8 July 2022 and 8 January 2023 identifying the property as 'The Lodge' as its own separate address; and
- Letter from the NHS dated 5 October 2022 outlining 'The Lodge' as its own separate address.

In addition, there are numerous photographs showing the lodge being lived in dated January 2018, February 2018, April 2018, October 2018, November 2018, December 2018, March 2019, April 2019, June 2019, October 2019, December 2019, April 2020, May 2020, June 2020, August 2020, October 2020, December 2020, February 2021, April 2021, June 2021, August 2021, October 2021, December 2021 and April 2022.

The case for the applicants is set out in a witness statement by James Blyth the applicant, dated 9th February 2018, and a witness statement from Simon Ward the tenant, dated 4th May 2018.

The case made is that this mobile home has been on the land for over 10 years. It was first brought onto the land in 1994 and was occupied residentially by Ken McTaggart who worked at that time for Sentry Farms Ltd, as confirmed via a letter received from the then director of the company. This

arrangement remained until December 2006 when the applicant was approached by Simon Ward, who worked for a neighbouring farmer on a casual basis but who also assisted in the care of wild boars located on the adjoining section of Wick Farm, to take up occupancy of the mobile home. From September 2007 it was agreed that Simon Ward pay a monthly rental to James Blyth. Initially this was directly paid, with receipts having been submitted alongside the application. Following this, a standing order was set up with NatWest Bank between August 2008 and April 2013, and then with Lloyds Bank between July 2013 and November 2017, again with full details provided alongside the application.

Submitted aerial photographs from 2005, 2009 and 2012 show that over a period of time the site has been in use to site a mobile home. Whilst it is also acknowledged by the applicant that the mobile home has moved in recent years due to the ongoing construction of the reservoir and haulage road, the position of the mobile home has remained within the same planning unit within close proximity to its original location.

Counter Evidence

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

The Council has no conflicting information to disprove the contents of the statements and therefore on the balance of probabilities it is believed that the property has been used as a separate residential dwelling continuously for four years.

Representations

Paragraph: 008 Reference ID: 17c-008-20140306 of the Planning Practice Guidance states that there is no statutory requirement to consult third parties, including parish councils or neighbours. Nevertheless, it goes on to say that it may be reasonable for a Local Planning Authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Importantly, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

The local planning authority notified Beaumont Parish Council, who have objected to application on the grounds that the site is not sustainably located, with no nearby services, mains drainage or other infrastructure. In addition, they consider the proposal is not in-keeping with the surrounding area, will set a dangerous precedent and also have concerns regarding the safety of the access.

In response to this, while these comments are noted they each relate to the planning merits of a dwelling in this location, however this application is instead applying to provide sufficient evidence that the dwelling has been in situ for at least four years, so these points are not matters that can be taken into account in the determination of this application.

One additional letter of objection has been received, which has re-iterated the comments raised by Beaumont Parish Council and adds that it would set a dangerous precedent. As above, the response to this is that these points are not matters that can be taken into account in the determination of this application.

Conclusion

In order for the lawful development certificate to succeed, it needs to be proven to the Local Planning Authority that, on the balance of probabilities, the existing use for a continuous period of four years prior to the submission of this application.

Planning merits and material considerations are not relevant to the case. The issuing of a certificate depends entirely on the factual evidence relating to the history and planning status of the land and buildings, and the interpretation of the relevant planning law.

Subsection (4) of Section 191 of the Town and Country Planning Act 1990 (as amended) indicates that if the Local Planning Authority is provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application they shall issue a certificate to that effect. In any other case the Local Planning Authority shall refuse the application.

In the case of applications for an existing use, if a Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

On this occasion, Officers are content that a significant level of information has been provided that demonstrates not only that 'The Lodge' has operated as a residential dwelling for the four years prior to the submission of the application, but that it has continuously done so. Given this, and that the Council has no counter evidence that disproves this, based upon the above advice a lawful development certificate can be granted.

6. Recommendation

Lawful Use Certificate Granted

7. Condition

- 1 Sufficient evidence has been submitted with the application which is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, The Lodge at The Twiggery, Chapel Road, Beaumont, CO16 0AR has been used as a dwelling house Class C3 for a period in excess of 4 years and enforcement action can no longer be taken.

8. Informatives

n/a