

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	ML	14/06/2018
Planning Development Manager authorisation:	AN	18/6/18
Admin checks / despatch completed	AP	19/6/18

EB

19/06/18.

Application: 18/00680/LUEX

Town / Parish: Lawford Parish Council

Applicant: Mr & Mrs Booty

Address: Caravan at 63 Tile Barn Lane Lawford

Development: Use of land for stationing of a static mobile home as a permanent residential dwelling unit.

1. Town / Parish Council

Lawford Parish Council No identified need for a static mobile home

2. Consultation Responses

n/a

3. Planning History

18/00680/LUEX Use of land for stationing of a static mobile home as a permanent residential dwelling unit. Current

4. Relevant Policies / Government Guidance

n/a

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. Part 1 was examined in January 2018 with the Inspector's report awaited and whilst its policies cannot yet carry the full weight of adopted policy, they can carry some weight in the determination of planning applications. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

5. Officer Appraisal (including Site Description and Proposal)

Site Description

The application site is located on the north-eastern side of Tile Barn Lane within the parish of Lawford. On the land at present are two mobile homes positioned within a grassed part of the site enclosed partly by a close boarded fence. This lawful use application concerns the front unit labelled 'Fiesta' as that is the make of the unit. This part of the site is largely screened in views from Tile Barn Lane by vegetation along the site frontage. To the south of the site is the applicant's property no. 63 Tile Barn Lane. Access from Tile Barn Lane is shared with no.63 and a yard to the rear.

Claimed Lawful Use

The claim relates to the siting of a mobile home on the site to the north of no. 63 Tile Barn Lane. The claim is that the mobile home has been lived in on a permanent residential basis since 2006 (when the applicant's purchased the property) by a Mr Whiten.

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. 1st May 2018 when the application became valid. The claimed use should have been taking place continuously for at least 10 years prior to that date.

Enforcement Action

A further requirement for the issue of a Certificate is that the local planning authority has not taken enforcement action against that use or uses within that 10 year period.

Should the certificate be granted the Council would be accepting on the balance of probabilities that the claimed use was now immune from formal planning enforcement action under the Town and Country Planning Act 1990. In the event that the evidence submitted supports the case on the balance of probabilities then a Certificate should be granted.

There is no current outstanding enforcement notice as to the claimed use.

Burden of Proof

In determining this application the National Planning Practice Guide on Lawful Development Certificates is relevant. Within paragraph 6 of the practice guide to these applications it is noted that "the burden of proof" in applications of this type is firmly with the applicant.

The relevant test is on the "balance of probabilities" and local planning 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.

In order to grant a certificate the Council would need to be satisfied on the balance of probabilities that the claimed use had been carried out at the application site for a period of 10 years continuously and that the Council were not in a position to take further formal action to end that breach of planning control.

Evidence submitted:

The burden of proof is on the applicant and this evidence does not have to be corroborated by independent evidence in order to be acceptable. The evidence submitted consists of;

- aerial photo from 2005 showing the mobile home in situ
- Council Tax bills addressed to Mr Whiten dating from 2006 to 2008 for the Caravan at 63 Tile Barn Lane, Lawford.
- Council Tax bills addressed to Mr Booty dated from 2009 and 2013 for the Caravan at 63 Tile Barn Lane, Lawford (both these bills include a discount for no occupants/empty property).

- Letter from the valuation office dated 2012 when the caravan was reassessed to correct an earlier mistake when the unit was removed from Council Tax records.
- a selection of electricity bills concerning a '2nd supply' at 63 Tile Barn Lane. These bills date from 2007, 2009, 2010, 2011, 2014, 2016 and 2017.
- a letter from the applicants Mr and Mrs Booty to Mr Whiten dated 2006 outlining the tenancy agreement of the mobile home.
- canine vaccination records for Mr Whiten's dog dating back to 2002 through to 2008.
- a series of invoices and Gas Safety Certificates dating from 2006 through to 2015 referring to the Fiesta Caravan. The later invoice/certificates state only 63 Tile Barn Lane.
- invoices/receipts for works undertaken, gas supply and emptying the septic tank dating from 2007 to 2011.

The burden of proof on a lawful use application lies with the applicant. In this case the evidence submitted does not prove a continuous use for the use described on the application form. The evidence submitted is quite sparse. The Council has considered whether on the balance of probability the evidence is adequate. The Planning Practise Guide on Lawful Development Certificates (2014) places the onus on the applicant to provide the necessary factual information in order to substantiate the application. This decision is therefore in accordance with established case law.

Whilst it acknowledged that the mobile home has been on the land for over 10 years, the evidence submitted does not provide sufficient evidence that it has been continuously lived in as a permanent residential dwelling for more than 10 years. The submitted bills are largely historic and in many cases do not refer specifically to the mobile home or the occupier. As such they do not prove adequately that the unit has been lived in continuously as a separate dwelling for more than 10 years. Moreover the submitted Council Tax records do not support the continued unabated use of the mobile home as a residential unit as they include discounts for the unit being unoccupied or empty at certain periods. In addition there are no Council Tax records for the mobile home in question from the last 5 years.

Taking all these factors into account the Council considers that there is insufficient evidence to demonstrate that, on the balance of probability, the mobile home has been used as a separate and independent dwellinghouse as claimed continuously in excess of 10 years.

6. Recommendation

Lawful Use Certificate – Refusal

7. Reasons for Refusal

- 1 The applicant has failed to provide sufficient and precise evidence to demonstrate that the application site shown edged red on the plan annexed to this decision notice has been used for the claimed lawful use for a continuous period of ten (10) years prior to the date of this application. The onus is on the applicant to provide the necessary factual information in order to substantiate the application.

In this case the evidence submitted is inconsistent, imprecise and sparse and does not prove on the balance of probabilities that such use is lawful.

Whilst it acknowledged that the mobile home has been on the land for over 10 years, the evidence submitted does not provide sufficient evidence that it has been continuously lived in as a permanent residential dwelling for more than 10 years. The submitted bills are largely historic and in many cases do not refer specifically to the mobile home or the occupier. As such they do not prove adequately that the unit has been lived in continuously as a separate dwelling for more than 10 years. Moreover the submitted Council Tax records do not support the continued unabated use of the mobile home as a residential unit as they include discounts for the unit being unoccupied or empty at certain periods. In addition there are no Council Tax records for the mobile home in question from the last 5 years.

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8. Informatives

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO