

MARRONS SHAKESPEARES

This matter is being dealt with by
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Our ref: .10.908541.1.PW.vt
Your ref:

31 January 2014

BY E-MAIL AND POST:
jworley@melton.gov.uk

Dear Mr Worley

Certificate of Lawfulness Lionville Brickworks

I refer to your e-mail to Mr S Mair of Andrew Granger & Co on 10 January 2014, in connection with the above matter as I understand that following the recent decision of the Borough Council's planning committee to refuse the planning application on this site you are now seeking to press ahead with your previously stated intention of revoking the above Certificate of Lawfulness of Existing Use or Development.

I note that your e-mail records that the previous exchange of correspondence on the issue of revocation from 2012 constitutes the "starting point" from which to resume consideration of the matter.

As you will be aware from my letter of 8 February 2012, under the provision of Section 193(7) of the Town and Country Planning Act 1990:

"A local planning authority may revoke a certificate under either [Section 191 or Section 192] if, on the application for the certificate –

- a) *a statement was made or a document used which was false in a material particular; or*
- b) *any material information was withheld."*

As previously advised, these are the only provisions by which a local planning authority may revoke a Certificate and it was further understood that the Borough Council's position has not changed from your letter of 10 January 2012 in which you assert that "the application was found to be false in a material particular in that it stated that the access road had been completed under the terms of the 1972 permission".

As previously highlighted, in order for a matter to be made materially particular, it must have a significant bearing on the decision which was taken in 2010 by the Council to issue the Certificate of Lawful Use. In this case, the questions the Council was required to determine

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at that stage was whether planning permission had been implemented. As you will appreciate, the statement that the access route had been completed goes well beyond that which was required to be established at the that the Certificate was issued and accordingly the statement which the Council now allege to be false was not a "material particular" to be considered at the time of determination of the application for the Certificate. As such, the accuracy of that statement, or otherwise, is not a consideration for the purposes of revoking the Certificate, and therefore does not fall within Section 193(7)(a) of the Town and Country Planning Act 1990.

I would therefore ask that you provide a detailed explanation by return as to why you consider your proposed course of action falls within one of the two criteria contained within Section 193(7) and would add that it is unacceptable that a committee meeting has been scheduled on Thursday 13 February 2014 without this application being supplied.

This matter is one which requires the Council to identify the basis for the revocation and also provide clear and material evidence to the contrary. To date, the evidence which it is understood the Council is seeking to rely upon, arises from assertions made by members of the public, who as highlighted in my letter of 8 February 2012, chose not to comment on the application for a Certificate of Lawfulness during the two and a half year period in which it was considered and investigated by the Council and only arose following public discussions on which they sought to clarify their own recollection of those works. None of those discussions and the evidence arising from them was prepared in isolation and perhaps inevitably over the 40 years since the planning permission was originally granted, some memories may have become confused. From the statements which were submitted, it is clear that, whilst work were carried out to ensure the implementation of the planning permission in the period between 1972 and 1977, there is a strong suggestion that further works were carried out to the access at the start of 1990. Inevitably, many people have a clearer recollection of these works and those which were carried out in the preceding 20 year period. This is particularly pertinent given that the applicant need only have implemented the planning permission by commencing works on the access by no later than 1977, in order to secure the planning permission in perpetuity.

You will appreciate that the Council officers, no doubt acting diligently, considered the evidence and concluded that the planning permission had been implemented. For this matter to now be questioned as a result of assertions made by local residents acting well outside the consultation period is deeply unsatisfactory and well beyond the scope of Section 193 of the Town and Country Planning Act. Furthermore, it suggests that the Council acting improperly in granting the Certificate in 2010 something which I am sure was not the case.

As you will be aware, a recent planning application was recommended by officers for approval at planning committee subject to a condition that the applicant submit a formal undertaking in rescinding any rights arising from the 2010 Certificate of Lawfulness following the grant of permission. Whilst the application was narrowly refused at planning committee, a right of appeal to the Planning Inspectorate exists and I am advised that an appeal will shortly be submitted. I would therefore suggest that the Council give serious consideration to placing the question of revocation in abeyance whilst the appeal is determined and confirm that my client remains willing to provide the undertaking should the application be granted on appeal.

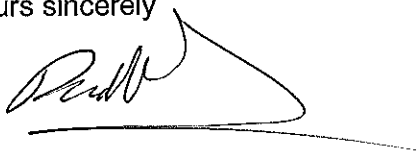
Notwithstanding all of the preceding points, I am instructed to provide you with a copy of the enclosed Statement of Truth which has been prepared by my client.

I would be grateful if you would confirm by return your intentions how to proceed with this matter and should you insist on continuing with the planning committee meeting on 13 February that you provide full details of the Council's position confirming which statement or document forming part of the application for the Certificate was false in a material particular by return.

However, I would strongly recommend that you give serious consideration for placing the matter in abeyance pending the outcome of the impending planning appeal as this may obviate the need for the scheduled meeting and any future discussions on this matter.

I await your response by return confirming your proposed course of action and would ask that you provide a copy of your response to my colleague Julie Russell as I am on annual leave from today until Monday 10 February.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Wakefield', with a long horizontal line extending to the right from the end of the signature.

Paul Wakefield

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Enc.