

**SPECIAL PLANNING COMMITTEE**

**13<sup>th</sup> FEBRUARY 2014**

**REPORT OF THE HEAD OF REGULATORY SERVICES**

**THE OLD BRICKYARD, SCALFORD**

**1. PURPOSE OF THE REPORT**

- 1.1 To resume the Committee's instructions to proceed with the resolution made on 20<sup>th</sup> December 2011 at which it was determined that the Committee was minded to revoke the Certificate of Lawful Use relating to this site.

**2. RECOMMENDATION**

- 2.1 That the Committee determines the way forward for the site from the following options:**

**That the Committee determines whether to either:**

- (i) proceed and revoke the Certificate, or;**
- (ii) takes no further action, on the basis of the representations received, it is no longer persuaded of the reliability of evidence submitted in terms of demonstrating the Certificate of Lawfulness application contained statements false in a material particular.**

**3. BACKGROUND**

- 3.1 This matter was considered by the Committee in December 2011 and at that stage it was resolved that **"the Committee is minded to revoke the Certificate of Lawfulness, in view of the additional information received and instructs the Head of Regulatory Services to Article undertake the measures required under General (Development Management) Order 2010 (as detailed in paragraph 7.2 of the report) as the next stage of this process"**. The minutes of this meeting (**Appendix 2**) and the documents to which they relate (**Appendices 3 – 5**) are included as Appendices to this report and provide more information on the background to the site. New evidence, submitted by the landowners, is attached as **Appendix 6**. The consideration of this issue was held in abeyance whilst a planning application for the site was compiled, submitted and considered. This was determined in January 2014 (refused).
- 3.2 The 'next stage' referred to is to make provision for the affected party(ies) to make representations prior to making a final determination, and that is the focus of this report.
- 3.3 The landowners have submitted written representations responding to the Committee's resolution and are invited to address the Committee in accordance with the legislative provisions. These written representations, along with new evidence submitted by the landowners are included as **Appendix 1, 1A and 6** to this report. **The Committee's attention is drawn to the request contained within Appendix 1A that this matter be**

**held in abeyance pending the determination of an appeal against the refusal of planning permission referred to at para. 3.1. above.**

#### 4. **KEY ISSUES**

- 4.1 The key issue for the Committee is to determine how to respond to the representation that has been submitted. Within the options available are to either proceed and rescind the Certificate, or take no further action on the basis that it has exposed shortcomings in the evidence submitted, such that the Committee is no longer persuaded of its reliability in terms of demonstrating the Certificate of lawfulness was incorrectly claimed.
- 4.2 The Committee will recall that the terms for revocation of the Certificate of Lawfulness are that :
- (a) a statement was made or document used which was false in a material particular; or
  - (b) any material information was withheld

It was persuaded in December 2011 that the evidence submitted was sufficient to show that (a) above was applicable. The evidence concerned, and commentary relating to it, are included as appendices to this report.

- 4.3 The applicant's representations to date are attached as appendix 1 and 1A to this report. They relevant points are summarised below, together with comments on the aspects relevant to the stage of the process being addressed:
- (i) That the Certificate of Lawfulness Application did not include a statement that the 1972 permission has been lawfully commenced.

The application was submitted by professional agents and the exact words on the application form were **“the access road was completed ....”**. It is considered that implicit within this statement was the assertion that it intended to convey such works took place within 5 years of the granting permission, simply because it would have no relevance the application if it intended a different meaning. Any doubt about this meaning was removed because in a document submitted with the application (entitled 'Design/Access Statement') it was stated **“..the entrance as approved was constructed within the 5 year consent period.”**

The fact that it refers to “completed” as opposed to “commenced” is considered to be irrelevant because naturally something has had to be commenced it is complete.

It therefore appears there was no misunderstanding of (this aspect) of the grounds submitted with the application and that it sought to convey that the permission had been lawfully commenced because of the commencement of works covered by the 1972 permission. It is unclear as to what other meaning these words should, or could, be interpreted.

This content of the application is considered to be material because commencement implementation of the 1972 permission, through construction of the access, was the basis on which the Certificate was granted in 2010.

- (ii) That the Notice to the landowner was incorrect in that it did not accurately convey the Committee's resolution.

The Committee's resolution (in full) was that: **"the Committee is minded to revoke the Certificate of Lawfulness, in view of the additional information received and instructs the Head of Regulatory Services to undertake the measures required under General (Development Management) Order 2010 (as detailed in paragraph 7.2 of the report) as the next stage of this process"**.

The reasoning as set out in the minutes of the meeting was that **"Members agreed that the evidence available from the sworn statements regarding the timing of the development is sufficient to indicate that the statement in the Application (for the Certificate of Lawfulness) that the 1972 permission had been lawfully commenced within the 5 year period the permission allowed was false"**.

In the letter to the land owners this was conveyed as (again, in full) **"The resolution of this meeting was that the Committee resolves that it is minded to revoke the Certificate of Lawfulness, in view of the additional information received and instructs the Head of Regulatory Services to undertake the measures required under General (Development Management) Order 2010 as the next stage of this process.**

**The basis for this was 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."**

It is not considered that this is incompatible; the content of the letter reflects closely the resolution of the Committee and the reasoned basis for arriving at it. More specifically, it repeats exactly the resolution itself, and the reason in similar terms.

- (iii) That the evidence on which the Certificate was granted remains the most reliable and that 'counter-evidence' submitted by residents after it was granted, relate to events some 40 years previously and will inevitably have become confused over time.

Members were aware of the background and nature of the evidence it considered in 2011 and it was satisfied that it was sufficiently reliable to conclude that material submitted with the application was material and false. As such, these issues have already been rehearsed but the Committee is invited to reconsider this matter in the light of the comments submitted by the landowner.

## 5. POLICY AND CORPORATE IMPLICATIONS

- 5.1 There are no policy or corporate implications associated with this issue.

## 6.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

- 6.1 The decision as to whether to revoke a Certificate of Lawful use is a matter for the local planning authority and no compensation is payable in the event of revocation.

6.2 There is a risk of a potential award of costs against the authority which is set out in paragraph 7 below.

**7.0 LEGAL IMPLICATIONS/POWERS**

7.1 Section 193 of the Act empowers a Local Planning Authority to revoke a certificate if, on the application for the certificate—

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

7.2 The Committee should consider the written representations of the landowners and any verbal submissions and consider those prior to making a final decision as to whether or not to revoke the Certificate of Lawful Use.

7.3 There is no right of appeal against the Council’s decision to revoke a Certificate of Lawful Use, but the validity of the decision could be subject to judicial review. There is nothing to prevent a further application being submitted following a revocation of an earlier Certificate of Lawful Use. If the Council is deemed to have acted unreasonably in revoking a certificate, and refusing to grant a fresh Certificate of lawful Use, there could be a risk of a successful application for costs in the event of a subsequent appeal to the Secretary of State under Section 195 of the Town and Country Planning Act 1990.

**8.0 COMMUNITY SAFETY**

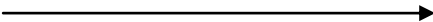
8.1 There are no community safety issues arising from this issue.

**9.0 EQUALITIES**

9.1 There are no equalities issues to be considered.

**10.1 RISKS**

Very High A						
High B		1, 2			<b>Risk No.</b>	<b>Description</b>
Significant C					1.	Challenge to decision by applicant
Low D					2.	Challenge to decision by local resident(s)

Very Low E				
Almost Impossible F				
	IV Negligible	III Marginal	II Critical	I Catastrophic
				
	<b>Impact</b>			

## 11.0 CLIMATE CHANGE

11.1 There are no implications for Climate Change.

## 12.0 CONSULTATION

12.1 Consultation has been carried out in the form of communications with all parties known to be interested in the issue, the Parish Council, Ward Members and attendance at 2 public meetings held in Scalford at which the issue was presented and questions answered.

## 13.0 WARDS AFFECTED

13.1 Waltham on the Wolds

### Appendices:

- Appendix 1: Landowners representations – January 2014
- Appendix 1A: Landowners representations – February 2012
- Appendix 2: Minutes of the meeting of 20<sup>th</sup> December 2011
- Appendix 3: Report to the Committee meeting of 20<sup>th</sup> December 2011
- Appendix 4: summary of and commentary upon information (referred to in Appendix 3 above).
- Appendix 5: letters submitted by interested parties (referred to in Appendix 3 above)
- Appendix 6: evidence submitted by Mr Hill, Jan 2014

### Background Papers:

1. CLUDE application no. 07/01354/CLU and associated documents

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# LOCATION PLAN

