

SPECIAL DEVELOPMENT COMMITTEE

20th DECEMBER 2011

REPORT OF THE HEAD OF REGULATORY SERVICES

THE OLD BRICKYARD, SCALFORD

1. PURPOSE OF THE REPORT

- 1.1 To present a report informing the Committee of information received in respect of 'The Old Brickyard', Scalford and to invite consideration of action to be taken.

2. RECOMMENDATION

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

- (i) That no action is taken;
- (ii) That the Committee resolves that some of the information received is insufficiently detailed and instructs officers to approach the contributors for clarification where applicable.
- (iii) 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 detailed in paragraph 7.2 of this report as the next stage of this process.

3. BACKGROUND

- 3.1 Planning permission was granted for in 1972 for the use of the land as a caravan site, including access, internal roads and ancillary buildings. This development was the subject of a Certificate of Lawfulness application submitted in 2007 which after evaluation of the evidence, was granted in 2010 (07/01354/CLU).

The Act defines 'lawfulness' as:(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 3.2 The basis for the grant of the Certificate was that the applicant stated in the application that, under the 1972 permission, "the access road was completed" and submitted documents supporting that statement comprising:

- The access is physically present on the site and has been surveyed and shown to match the submitted plan that forms part of the 1972 permission (i.e. it is the same access as that approved).

- Correspondence submitted by the applicant originating from the Local Planning Authority in 1977 that the access was approved. This document was cross checked and appeared also in the public record, in this instance the planning application file held by the County Council.
- Correspondence from the Planning Authority at the time to the Area Surveyor on 21 October 1977 that accepts that the access can be constructed without necessity of the submission of a further planning permission, being in accordance with details and to the satisfaction of the County Engineer. This was similarly checked and appeared in the public record.

3.3 The evidence submitted was supported by the public record and by the physical presence of the access on the site in a form that matches the 1972 approved plans. No information or evidence was submitted that cast doubt or contradicted this evidence or the applicant's statement.

3.4 The 1972 permission was granted under the provisions of the Planning Act 1971 and permission granted under the Act at this time required development to be commenced within 5 years of the date of the grant of permission. Commencement of development is defined by s56 of the Town and Country Planning Act 1990 and this includes the provision that "any operation in the course of laying out or constructing a road or part of a road" would be a commencement of development. Accordingly, the test in law was the commencement of the construction of the access – not its completion – and in this respect the applicant's statement exceeded what was necessary to secure lawful commencement.

3.5 Once started, permissions remain 'live' in perpetuity and as such it was concluded the permission was still valid and resuming the development would be lawful within the meaning of s192 of the Act.

3.6 An application was submitted in April 2011 (11/00329/VAC) seeking to redesign the layout of the caravan site from the 1972 version and remove the requirement (condition) to build a toilet/laundry block before caravans occupy the site. The application was withdrawn in September 2011.

3.7 Residents concerned about the Certificate advised that they had evidence to prove that the applicant's submitted evidence was flawed. A public meeting, attended by approximately 75, was held in Salford on 13th September at which similar statements were made. The Parish Council and Ward Councillor (Cllr Holmes) have also received numerous approaches in similar terms.

3.8 In response to the approaches, invitations were sent to all parties known to be interested in the site to submit information. This invitation explained what type of evidence, the form it could take and explained that it would be open to public inspection. A similar invitation was sent to the applicant.

3.9 The responses received are summarised in **Appendix A** and reproduced in full in **Appendix B** as background information.

4. **KEY ISSUES**

4.1 The key issue for the Committee is to determine how to respond to the information that has been submitted. Within the options available are to either rescind the Certificate, or take no action. The scope for rescinding the Certificate is set out in the legislation (s193 of the Act, see paragraph 7.1 below) if the Committee is persuaded that either:

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

There are further procedural requirements that apply subsequent to this section, which provide for the applicant to be heard by the Council after an intention to revoke a Certificate of Lawfulness is made. These are set out at paragraph 7.2 below. Accordingly, the key issue for consideration is whether or not the information submitted by those persons who state that they have personal knowledge of the development of the site is sufficient to prove that either (a) or (b) above was the case. The legislation does not qualify these requirements in terms of the level of proof required and as such this step can be taken only if there is no doubt that one, or both, of the requirements have been met. There is no right of appeal against such a decision; any challenge would need to be made through judicial review.

4.2 None of the information received directly conflicts with, nor casts into doubt, the documents that were submitted with the Certificate as described at paragraph 3.1 above. However, several provide personal accounts that directly challenge the statement in the application itself that “the access road was completed” within the necessary time period. (i.e before December 1977). The documentary evidence submitted with the application supported this statement, but it did not demonstrate the works physically took place at the dates suggested, only that the necessary preparations were made in terms of designs and permissions etc.

4.3 The applicant has not submitted any further evidence or information supporting the statement contained in the application and as such the Certificate continues to rely on his statement and the evidence that supports it, which carry appropriate dates.

4.4 A number of personal accounts challenge the date concerned and state that the kerbing of the access was not carried out within the lifetime of the permission (i.e. before December 1977) but was undertaken at a later date. There is a degree of inconsistency in the accounts in that these works are described as being from “the late 1980’s”, some are less specific regarding the date but described it as “the 1990’s”. Several more do not specify a date for this work but state that “no works were undertaken” until after 1990 (letters 2, 3, 5, 6, 7 and 13 in the appendices). Though at variance in their accounts, these statements are consistent in asserting the works did not take place in the period required to constitute a lawful start of the development under the 1972 permission (i.e by December 1977), and as such are contrary to the applicant’s submissions.

4.5 There are other recollections and statements that suggest that there was an access to the site as the works that were carried out, again in the late 1980’s or early 1990’s were for kerbing, alterations or improvements to the access (letters 1, 4, 8, 9, 10, 11, 12, 14 and 17 in the appendices).

- 4.6 There are two accounts (letters 4 and 16 in the appendices) that state that there was an access into the site, including a recollection that the surfacing of the access must have been carried out between 1972 and 1974 following the granting of the permission in 1972, perhaps coincidentally.
- 4.7 The Certificate relies on the demonstration of the *commencement* of the access took place before December 1977 (rather than its completion(see paragraph 3.4 above) and consideration should be given as to whether this aspect is addressed by the information, over and above the challenge to the applicant's statement regarding specifically the *completion* of the access. The information received is considered to address this point in equal measure to the question of completion.
- 4.8 The legislation allows revocation of a Certificate if "a statement was made or document used which was false in a material particular". Accordingly, the materiality of this information requires examination.
- 4.9 The 1972 permission was granted under the Planning Act 1971 and this required permissions to be commenced within 5 years of the grant of permission (a similar provision exists under the current, 1990, Act allowing 3 years). Accordingly, in order to constitute a lawful commencement of the permission the works to the access needed to have begun by December 1977 and this date is material as it makes the difference between implementation of the permission or otherwise. Outside this date, works could be either unauthorised or 'permitted development', but in either case would not represent implementation of the permission. Accordingly, the information provided is considered to be material to the Certificate.
- 4.10 In considering this information, the Committee should take into account the length of time that has passed and the detail and the accuracy of the information received. The dates at issue are some 35 years ago and therefore rely on correspondents' memories extending back this far. The works are relatively small scale and low profile (i.e. ground works only; no buildings involved) of the nature that construction workers would be present for a limited period of time. Correspondents' statements therefore rely on them both recalling the works taking place and also recollecting the date this occurred. A number of the accounts set out the basis on which correspondents are familiar with the site which provide insight into how they can recall with confidence what works have taken place and when they were carried out. In contrast, a number of accounts qualify the information they provide with statements such as "to my knowledge" which suggests the authors concerned are alive to the possibility that their understanding of events may not be fully comprehensive.
- 4.11 The information received is in the form of personal accounts, many of which are sworn to be true in the presence of a Justice of the Peace. In respect of balancing the evidence, it is advised that such sworn statements should be regarded as reliable and, in the context of this case, are of a status equal to the applicants (the declaration on the original application form). Despite the above there are examples of accounts that contain information known to be factually incorrect and this casts doubts on the reliability of the statement. Instances of this are highlighted in Appendix A.

4.10 The level of precision and detail included in the information received varies considerably. This has significance in terms of evaluating the content because those with lesser detail and precision require that their accounts are interpreted and in turn, require that assumptions are made. This, in turn, affects the value of the contributions and similarly commentary is made where applicable in Appendix A.

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 There are no direct financial or resource implications associated with this report. However, very significant financial and resource implications would arise if the Committee's decision was the subject of judicial review and/or the landowner was to take action against the action for compensation in the scenario that the Certificate was revoked on an unsound basis.

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 procedure to be followed is set out in the General (Development Management) Order 2010 and requires the Council, before they revoke the Certificate, to give notice of that proposal to the owner and occupier of the land affected and to any other person who will be affected, allowing them no less than 14 days to make representations.

7.3 The Committee should consider whether the evidence submitted to date is sufficient to prove that the original evidence submitted by the applicant is false or that material information was withheld at the time of the application for the Certificate of Lawfulness. In so doing, the Committee should consider the content, quality and consistency of the information submitted.

7.4 In the exercise of assigning 'weight', evidence is normally attributed more importance if it is independently corroborated, supported by documents (especially if from independent sources or the public record) or if a personal account, in the form of a sworn statement or affidavit detailing the writer's identity, detail of understanding of events and how they are confident in the accuracy of their account.

8.0 **COMMUNITY SAFETY**

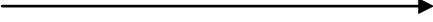
8.1 There are no community safety issues arising from this issue.

9.0 **EQUALITIES**

9.1 There are no equalities issues to be considered.

10.1 **RISKS**

Very High A						
High B		1, 2	3.		Risk No.	Description
Significant C					1.	Challenge to decision by applicant
Low D					2.	Challenge to decision by local resident(s)
Very Low E					3.	Seeking of compensation
Almost Impossible F						
	IV Negligible	III Marginal	II Critical	I Catastrophic		



Impact

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 Scaford at which the issue was presented and questions answered.

13.0 **WARDS AFFECTED**

13.1 Waltham on the Wolds

Appendices: Appendix A: summary of information submitted
 Appendix B: letters submitted by interested parties referred to in Appendix A

Background Papers:

1. Planning Permission no. 11/00329/VAC and associated documents.
2. CLUDE application no. 07/01354/CLU and associated documents

Officer to contact: J Worley, Head of Regulatory Services 502359

APPLICATION LOCATION PLAN

