

## EXEMPT

### DEVELOPMENT COMMITTEE

29<sup>TH</sup> SEPTEMBER 2011

### REPORT OF THE HEAD OF REGULATORY SERVICES

#### THE OLD BRICKYARD, SCALFORD

#### 1. PURPOSE OF THE REPORT

- 1.1 To present a report updating the Committee on the position at '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 takes a form of enforcement action;
  - (iii) That the Committee awaits the response to the invitation to submit additional evidence, and considers the matter further;
  - (iv) That the Committee determines an alternative route forward.

#### 3. BACKGROUND

- 3.1 Planning permission was granted for the site in 1972 for 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 basis for the grant was that evidence submitted showed that work started on the scheme in the form of creating the access. Specifically, the relevant evidence comprised:

- The access is constructed in accordance with a submitted plan. This 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 from the Local Planning Authority in 1977 that the access was approved and there is no evidence to suggest that the access was not created within the time limit of 5 years from the date of the permission. 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.

It will be noted therefore that evidence was submitted and it was supported by the public record and by physical presence of the access on the site in a form that matches accurately the 1972 approved plans. Once started, permissions remain 'live' in perpetuity and as such it was concluded the permission was still valid.

- 3.2 This year, an application has been 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.
- 3.3 Residents concerned about the Certificate and are *now* advising that they have evidence to prove that the applicant's submitted evidence was flawed. These statements are contained in various letters of representation received in 2011 relating to 11/00329/VAC. The following is content extracted from the letters relevant to the matter of the 1972 permission and the Certificate of Lawfulness:
- *To my knowledge no development of the site for the purposes of the existing planning permission was ever carried out – a local resident*
  - *The access was provided with radius kerbs (date unspecified – suggests early 1970's)- a former MBC employee with involvement from the 1970's onwards.*
  - *Residents who live near the site have clear recollection of when the site access was constructed. The kerbs were laid in 1989 or 1990.- a Planning Consultant employed by (unspecified) local residents*
  - *We have lived near the site over 30 years and have never noticed any works – a local resident.*

The Parish Council has received similar representations of this nature and advises;

- *In 2 letters from local residents it was mentioned that no/insufficient work had been undertaken following the 1972 application.* The PC has subsequently supplied one of these letters but the reference to insufficient works appears to be absent. The PC has been asked to clarify their reference but have not responded.

The Ward Councillor has similarly received representations and advises that residents are seeking a legal challenge to the Certificate of Lawfulness.

- 3.4 A public meeting, attended by approximately 75, was held in Scaford on 13<sup>th</sup> September at which similar statements were made. The Parish Council and Ward Councillor (Cllr Holmes) have also received numerous approaches regarding the issue and, it is understood, have agreed to collate evidence of the nature described in the statements. However, to date these references have not manifested themselves in anything submitted to date in terms of evidence and the above statements are at present the full extent of the expressed position. However, all parties with a known interest in the development have been invited to submit any evidence they may possess, and advice has been provided as to form that this could take.

#### 4. **CURRENT ISSUES**

- 4.1 In view of the current controversy relating to the issue, the Committee is invited to consider whether it should take any action in respect of the 2010 Certificate of Lawfulness. The following paragraphs address the options that are considered to be available:

##### 4.2 **Revocation**

- 4.2.1 S193 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.

4.2.2 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.

4.2.3 The Committee should consider whether the evidence submitted to date is sufficient to prove, on the balance of probabilities, that the original evidence submitted by the applicant is false. In so doing, the Committee should consider the content, quality and consistency of the evidence in our possession (see para. 3.2 above).

4.2.4 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.

4.2.5 Alternatively, the Committee may wish to await the response to the invitation described at 3.4 above and set a date at which it will be considered further.

4.3 **Enforcement Action and/or an injunction** (to prevent (further) development taking place)

4.3.1 The developer advised on 19<sup>th</sup> September that "The clearing of the northern part of the site is going to recommence later this week. This is so the access roads as commenced under the approved planning application 72/1880 (drawing No. 6155/64) can be completed." Accordingly, it is considered that additional development is likely to go ahead under the authority of the 2010 Certificate described at 3.1 above.

4.3.2 The Certificate of Lawfulness is a formal document that states that the development is lawful within the terms of the Act. In order to take Enforcement Action the Council needs to be satisfied that the development is in breach of planning control and, in the circumstances of the case, that the development would be unacceptable in planning terms.

4.3.3 In respect of this site, the Certificate of Lawfulness guarantees immunity from Enforcement Action and as such this course of action could not be contemplated until the steps described at 4.2.1 and 4.2.2 have been completed.

4.4 **No action or an alternative course of action**

4.4.1 The Committee may consider the current position to be satisfactory and to take no further action, or may propose an alternative course. The Committee is recommended to take professional advice (planning and legal) if it proposes a course of action not anticipated in this report.

5. **Conclusion**

5.1 The Committee is alerted to the level of public interest expressed regarding the site and the applications relating to it, the nature and the content of representations that have been received. It is considered important to consider the position in order to respond to

the representations but equally it should be noted that consideration at this stage would not prevent further consideration at a future date, for example, should more information become available.

**Background Papers:**

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

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

**APPLICATION LOCATION PLAN**

