

5s E/09/0363/A – The unauthorised erection of a dwellinghouse at Valleyfields, Westland Green, Little Hadham, SG11 2AE

Parish: LITTLE HADHAM

Ward: LITTLE HADHAM

RECOMMENDATION:

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of the unauthorised use and the removal of the physical elements of the development that form part and parcel of, and an integral part of, the use.

Period for compliance: 6 months.

Reason why it is expedient to issue an enforcement notice:

1. The site lies within the Rural Area as defined in the East Herts Local Plan wherein there is a presumption against development other than required for agriculture, forestry, small scale local community facilities or other uses appropriate to a rural area. The development is prejudicial to this policy, set out at policies GBC2 & GBC3 within the East Herts Local Plan Second Review April 2007.
2. The development results in the creation of an isolated residential dwelling in the countryside which is contrary to the Council's aim of providing a sustainable pattern of development across the district and is thereby contrary to policy SD2 of the East Herts Local Plan April 2007 and national planning policy contained in paragraph 9(ii) of PPS7.

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1.0 Background:

- 1.1 The site is shown on the attached Ordnance Survey extract. It is situated about 160 metres along a bridleway, accessed from Chapel Lane about 900 metres from its junction with The Ford, Little Hadham.
- 1.2 Some Members may recall that this application was originally on the agenda for the 21st October 2009. The case was withdrawn from that agenda when an appeal was made against a High Court judgement regarding a matter with similar facts to this one. Since then that case, R (on the application of Welwyn Hatfield Council) v Secretary of State for

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Communities and Local Government and Alan Beesley, has progressed through the Court of Appeal to the Supreme Court, whose decision was handed down on 6th April 2011. That Supreme Court decision supports the views of officers in this report.

- 1.3 On 31st March 2003 planning permission was granted (under application number 3/02/2136/FP) to the land owner for a horse shelter/haybarn/tractor store on concrete yard at the site. That permission contained a condition (number 2) requiring that the development be carried out in complete accordance with the approved plans, drawings and specifications.
- 1.4 On 24th July 2009 the owner, through an agent, submitted an application for a certificate of lawful use (under application number 3/09/1143/CL) for "Operational development comprising the construction and completion of a building in excess of four years ago and its continued occupation as a dwellinghouse since 15th July 2005."
- 1.5 In section 1 paragraph 4 of the supporting statement the applicant states that "The design of the barn had to be altered from the approved plans by extending the length, creating upstairs flooring and altering the roofline at one end to provide more room for the bedrooms."
- 1.6 The reason for this change of design and subsequent construction of the building is described as the 'need' of the owner to stay close to her horses and the lack of affordable housing in the area. At paragraph 4.1 of the supporting statement it is claimed that "the building has been erected and occupied as a dwelling for in excess of 4 years and is therefore lawful".
- 1.7 The supporting statement also details that the applicant had lived on the land in a caravan for 1 year prior to the building of the new house. As indicated at paragraph 1.4 above, the building was designed as a dwellinghouse from the outset.
- 1.8 Members will be aware that sections 171B (1), (2) and (3) of the principal Act define periods of time after which unauthorised developments become lawful. As it is important to consider these sections carefully, they are reproduced below:
 - (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
 - (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Section 336(1) of the Town and Country Planning Act 1990 defines the word 'building' in this context to include part of a building.
- 1.9 It is therefore necessary to consider the lawfulness of the building and the use separately. Officers consider that sufficient evidence has been submitted to the Authority to prove, on the balance of probabilities, that the building has been substantially complete for more than 4 years and may, therefore, be lawful. However, it should be noted that any immunity enjoyed by buildings or other operational development found to be lawful under the four year rule does not extend to the uses which they enable, unless those uses have been carried out continuously for the required legal period.
- 1.10 The owner states in her application that the building was designed and built as a dwellinghouse. Section 171B (2) of the Act, which details the only change of use to have a four year immunity, is restricted to circumstances "where there has been a breach of planning control consisting in **the change of use of any building** to use as a single dwellinghouse" [my emphasis].
- 1.11 It is the view of officers that as the building has not had a previous use it cannot have undergone a change of use; it does not therefore benefit from the four year protection granted by Section 171B (2). Accordingly the provisions of Section 171B (3) of the Act would grant a lawful status for the use of the building as a dwellinghouse but only after a continuous breach of planning control for a period in excess of ten years. That period has not yet elapsed.
- 1.12 This view was supported in the Supreme Court judgement in Beesley when the court decided that the word "use" is directed to a real or material use, not a permitted use. That case also revolved around the erection of a dwellinghouse (with the external appearance of a barn) when planning permission had been granted for a barn. The owner of that, too, claimed that the use was lawful following its residential use for a period in excess of four years.

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- 1.13 Given that the use of the building is not immune from enforcement action it is open to the Authority to use its powers under Section 173(4)(a) of the Act, which states that an enforcement notice shall specify what is necessary to remedy a breach of control by discontinuing any use of the land or by restoring the land to its condition before the breach took place. It is the view of officers that any such notice could include the removal of the building. That view is supported by case law.
- 1.14 However the recent planning history for the site would indicate that the horse shelter/haybarn/tractor store/concrete yard are acceptable in planning terms at the site. Accordingly members may think it more reasonable on this occasion to simply require the cessation of the use and the removal of all residential fixtures, fittings and paraphernalia; to include all kitchen and bathroom units and appliances, as well as the internal staircase leading to the first floor. The approved development did not have an upper floor and it would not seem to officers to be essential to the use for equine purposes.
- 1.15 On 12th April 2011 officers' received an e-mail from the occupier of the dwellinghouse stating that she was packing her property and intended to move into her parents house nearby.
- 1.16 Officers' consider that this action is not sufficient in law to cease (or abandon) the unlawful use. This view is supported, once again, by the Supreme Court decision in Beesley, referred to above. At paragraph 27 of his judgement, Lord Justice Mance states "The cases on abandonment show that use as a dwelling house should not be judged on a day by day basis, but on a broader and longer-term basis. Dwelling houses are frequently left empty for long periods without any question of abandonment or of their not being in or of use. A holiday home visited only yearly remains of and in residential use".
- 1.17 Accordingly officers' consider that it is still necessary for authority to be granted to issue and serve a Planning Enforcement Notice.
- 1.18 Photographs of the site will be available at the meeting.

2.0 Planning History:

3/02/2136/FP	Horse shelter/haybarn/tractor store on concrete yard at the site	Granted
3/09/1143/CL	Operational development comprising the construction and completion of a	Refused

building in excess of four years ago
and its continued occupation as a
dwellinghouse since 15th July 2005

3/10/1328/CL	Application for a Certificate of Lawfulness for the construction and completion of a building in excess of 4 years ago and its continued occupation as a dwellinghouse since July 2005.	Withdrawn by applicant.
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3.0 Policy:

3.1 The relevant policies in this matter are:-

- GBC2 – The Rural Area beyond the Green Belt
- EDE6 – Appropriate Development in the Rural Area beyond the Green Belt
- SD2 – Settlement hierarchy

4.0 Considerations:

- 4.1 The main consideration in this matter is the residential use of a building within an isolated part of the Rural Area, wherein there is a presumption against inappropriate development. As residential use is not detailed amongst the appropriate uses detailed in policy GBC3 it is contrary to both national and local planning policies which seek to restrict new residential development in isolated, unsustainable locations in the countryside.
- 4.2 As such, the local planning authority considers that the development is contrary to the main development strategy of the Development Plan which is to concentrate and direct development to the main settlements within the District. This strategy ensures that development is located in the most sustainable locations and that the natural asset of the District's countryside and its rural character is protected from encroachment.
- 4.3 This is also very much in accordance with national policy as expressed in PPS3 – Housing and in PPS7 - Sustainable Development in Rural Areas. PPS3 for example highlights the need for new housing to be in suitable sustainable locations which offer a good range of community facilities and with good access to jobs, key services and infrastructure. The site however, is not located within such a sustainable location.
- 4.4 Whilst some limited infill housing development may be appropriate within the built up area of Little Hadham village itself (in accordance with

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policy OSV2 (II) of the Local Plan), the appeal site does not fall within this built up area but is rather located within an isolated part of the countryside and therefore away from good access to key services and facilities. It is not therefore a sustainable location for new housing, the occupants of which would be almost totally reliant on the private car to access those key services and facilities.

- 4.5 If permitted, the erection of dwellings in the open countryside such as in this case, would cumulatively change the rural character of the District, both visually and in terms of the general level of activity, particularly as a result of additional traffic movements.

5.0 Recommendations:

- 5.1 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the unauthorised use and any works necessary to remove the physical elements of the development that form part and parcel of, and an integral part of, the use.