

Planning Committee: 16 August 2011

Item Number:

Application No: W 11 / 0274

Town/Parish Council: Sherbourne
Case Officer: Steven Wallsgrove
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Registration Date: 03/03/11

Expiry Date: 28/04/11

The Studio, Barford Road, Sherbourne, Warwick, CV35 8AA

Application for Lawful Development Certificate for existing use of building as a dwelling FOR Mrs Johnston

SUMMARY OF REPRESENTATIONS

Barford, Sherbourne & Wasperton Joint Parish Council: "The JPC does not consider itself competent to adjudicate on the legal merits of this application. It does however feel strongly that were this a planning application for change of use it would object on the grounds that the structure is sub-standard for a dwelling and probably does not conform with building regulations."

PLANNING HISTORY

No applications for planning permission on the site since 1948. The application for the access drive (W97/0746) states it was for The Bothy, but was before the present application says the building was converted. The application was refused but the driveway was constructed anyway.

There are no applications under the Building Regulations for the conversion of the building, although W96/0209BR shows a doorway to be constructed in the building and between the land at the back of it and the garden of The Cottage. This, again, was before the time of the conversion.

KEY ISSUES

The Site and its Location

The property is a small, detached, brick built single storey building with an attached 'carport' type structure on the north end. The brick built part is a traditional farm building probably erected in the nineteenth century. The flat roofed 'carport' type structure is more recent and was apparently erected between 1968 and 1990 (according to the Ordnance Survey maps) when the land was in agricultural use. It lies to the north of 'The Cottage' and at the start of the driveway to The Bothy. The three properties form a small complex opposite the junction with the road to Sherbourne and Fulbrook and halfway between the Longbridge Junction of the M40 motorway and Barford village.

Details of the Development

The proposal is an application for a Certificate of Lawfulness for the use of the building as a single dwelling and is supported by 5 Statutory Declarations.

Assessment

This is an unusual case which raises two basic, but significant, issues one of which was the subject of a recent decision in the Supreme Court. The reason for the report, however, is the need to consider taking enforcement action if members agree to the recommendation on the application itself, which would normally be dealt with under delegated powers.

The issues on the application itself are : (1) was the property the subject of a change of use to a dwelling and, if so, was that more than 4 years prior to the application (with the use being continuous ever since), and (2) were the works and change of use done by a deliberate deceit (referred to as the 'Connor principle' in the recent Supreme Court case of *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* and another).

On the first issue, the applicant has submitted 5 Statutory Declarations that the property has been used as a single dwelling since 2001 but there is no corroborative evidence and no access has been obtained to see inside the building. Externally, there is no visible evidence that the building is being used as a dwelling as there is no apparent front door or any other 'domestic' feature. The agent has not responded to an email on these points. It is not known, therefore, that the property is actually being used for the purpose claimed. In addition, there is no evidence from Council records of the use until 2009.

In particular, (a) no application has been submitted under the Building Regulations for any works to the building, (b) the property was not registered for Council Tax until 2009 (see email reply), (c) the property was only first registered on the Electoral Roll on 13 November 2009, and was empty in 2010 (see Officer Note in Acolaid). It is considered, therefore, that, while there is some justification for refusing the present application on the grounds that the evidence is not sufficiently precise and unambiguous, this may not be sufficient to justify a refusal in itself since the evidence does not actually conflict with that submitted.

On the second issue, which the Supreme Court considered was more important in the case before them, there is evidence to suggest a similar situation applies, namely that the applicant deliberately hid the conversion.

The applicant is known to have inherited various properties in Sherbourne and submitted applications under both the Planning Act and the Building Regulations, namely three planning applications in 1997, two of which were refused (W97/0745 and W97/0746), and six Building Regulations applications between 1996 and 1999. More recently a Certificate of Lawfulness was submitted for The Bothy (behind the present property), again for use as an independent dwelling when the original consent was as an annex to The Cottage (W10/0460). That property had also been let out ever since it had originally been converted. It is considered, therefore, that the applicant is well aware of the 'rules and regulations' for Planning and Building Regulations, namely the need to obtain consent under both of those regimes as well as the rules for Certificates of Lawfulness.

Similarly, the property was not registered for council tax or on the electoral register, a point also covered in the Supreme Court report, and the occupiers have lived a 'low key existence' (at least until 2009), again referred to in the same report. It is considered, therefore, that there is justification for not granting the Certificate on public policy grounds, as in the Supreme Court case. Legal Services have confirmed that they are of the opinion that the situation in

this case is closely similar to that in the Supreme Court, in that the applicant was aware of the legal requirements for planning permission and Building Regulations Consent, etc, due to her submission of previous applications for similar works, and, therefore, consider that the application should be refused for the reasons given in the decision on that case.

If the recommendation is accepted, then the next step is to consider whether enforcement action is justified. In this case, it is considered that the creation of a dwelling, contrary to policy, is a serious breach which does justify further action being taken. However, the dwelling is occupied so careful consideration has to be given to their human rights, and whether these over-ride policy. In this context, it is considered that the conflict with the policies of the Development Plan outweighs the human rights of the tenant, but that a relatively long period for compliance would ensure their rights are not unreasonably affected. In similar cases a period of 6 months has been applied.

RECOMMENDATION

That (1) the application for a Certificate of Lawfulness be refused, for the following reason, and (2) that appropriate enforcement action be authorised to cease the use of the premises as a dwelling and to remove all domestic features from the building within 6 months.

Reason

The conversion of the building into a dwelling, and its subsequent use for that purpose, was done in such a way that the use was concealed and it was not possible, therefore, for the District Planning Authority to have become aware of the use. To grant the Certificate, therefore, would be contrary to the intentions of Parliament in enacting S171B(2) of the Town and Country Planning Act 1990.
