

Planning Committee: 19 March 2013

Item Number: 13

Investigation Number: ENF 067/10

Town/Parish Council: Rowington

Case Officer: Gary Fisher
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**Land at The Stables, The Cumsey, Pinley Green,
CV32 4QS**

Use of outbuilding for separate domestic residential purposes

This report is being presented to Committee to request that enforcement action be authorised.

RECOMMENDATION

That appropriate enforcement action be authorised directed at the permanent cessation of the use of the outbuilding for separate domestic residential purposes with a compliance period of 6 months.

BACKGROUND

The outbuilding the subject of this report is currently in use for separate domestic residential purposes.

Whilst there is evidence that the building in question has been in similar use for many years, to date insufficient evidence has been provided to demonstrate on the balance of probabilities, that such use has taken place over an unbroken period of 4 years. In that respect, 2 applications seeking a Certificate of Lawful Development for such use have been refused, most recently in January this year.

RELEVANT LOCAL PLAN POLICIES

- DP1 - Layout and Design;
- RAP1 - Directing New Housing;
- RAP4 – Providing Rural Affordable Housing;
- RAP5 – Housing for Rural Workers.

National Policy

- The National Planning Policy Framework: Paragraphs 17, 49, 51, 55, 87.

RELEVANT PLANNING HISTORY

- W/91/0522: Application for planning permission for conversion of the Stables into a dwelling and garage. Planning permission refused because of the location within the open countryside and Green Belt and associated divergence from planning policy.
- W/99/0643: Application for planning permission for the conversion of the Stables into a holiday let. Planning permission refused because of the location within the open countryside and Green Belt and associated divergence from planning policy. This decision was also supported on appeal.
- W/09/1218: Application for a Certificate of Lawful Development for existing use of building and land as a dwelling and domestic garden: Certificate not issued. The conclusions of the assessment of evidence submitted with that application included that between January 2008 and July 2009, the building was occupied in a manner ancillary to the residential use of an adjacent property rather than as separate residential dwelling but that between July 2009 and April 2010, there was clear evidence of use as separate dwelling.
- W/12/1452: Application for a Certificate of Lawful Development for existing use of building and land as a dwelling and domestic garden. Certificate not issued. The assessment of the evidence submitted with that application included that between April 2010 to November 2011, there was insufficient evidence to demonstrate use as a residential dwelling. However, there was evidence to demonstrate use since that time as a dwelling house and garden.

KEY ISSUES

The Site and its Location

The application site is located in the open countryside and Green Belt within a loose cluster of residential properties to the south west of Pinley Green.

It comprises a small two storey building, hard standing and grassed area within its own site. At ground floor the building comprises three small storage spaces each accessed externally and a separate small basic kitchen area with a narrow spiral staircase leading to the first floor living, sleeping and bathroom facilities which again are basic in character.

The application site previously formed part of the adjacent residential property, Cumsey Lodge as stables and associated land. Evidence from aerial photographs suggests that at the earliest, prior to April 2008 the 2 sites were not subdivided in the manner that they are now.

Assessment

It is possible that evidence could be brought forward to demonstrate the use of the building as a domestic residential dwelling over some of the periods of time in respect of which, to date insufficient evidence has been produced.

However, over the period January 2008 to July 2009, whilst parts of the building were occupied, the evidence that has been submitted to date is that such occupation was in exchange for services provided to the occupants of the adjacent property. In that respect the legal advice provided to officers is that this may indicate that the property was being used as accommodation ancillary to the main dwelling, rather than as a separate dwelling house.

That being the case, in the circumstances where evidence was produced to demonstrate an unbroken separate domestic use since July 2009, such use would not become lawful and therefore immune from enforcement action until July 2013.

The National Planning Policy Framework requires that housing applications are considered within the context of the presumption in favour of sustainable development (paragraph 49); it states that empty houses and other buildings should be brought back into residential use and applications for the change of use from commercial to residential use should be approved where there is identified need for housing in the area (paragraph 51);

It also sets out that in order to promote sustainable development in rural areas, Local Planning Authorities should locate new residential development where it will enhance or maintain the viability of rural communities and avoid isolated new dwellings in the countryside unless there are special circumstances including an essential need for a rural worker; the safeguarding of a heritage asset, for example a Listed Building; or the improvement/enhancement of the building's immediate setting (paragraph 55).

The Framework also sets out that planning should take account of the character of different areas, protecting Green Belts and recognising the intrinsic character and beauty of the countryside whilst supporting thriving rural communities within it (paragraph 17).

It states that as with previous Green Belt Policy, inappropriate development is, by definition harmful and should not be approved except in very special circumstances (paragraph 87). At paragraph 99 it says that development which does not preserve the openness of the Green Belt is inappropriate development to which there is therefore an objection in principle.

The site is located in the Green Belt and open countryside close to a small cluster of residential properties. It comprises a small ex-stables building of no particular architectural merit which is currently in residential use.

It is considered that the permanent establishment of a new residential use in such a location would comprise unsustainable sporadic residential development in the open countryside to which there is an objection in principle.

Such development by definition would not enhance the vitality of existing settlements and would inevitably lead to the increased urbanisation of this part of the open countryside to the detriment of its character and visual amenities. Such development were it to become lawful would also accrue permitted development rights enabling the undertaking of further built development without the need for planning permission inevitably impacting upon the openness of the Green Belt to the extent that it could comprise inappropriate development.

Justification for Enforcement Action

Notwithstanding the extent of previous use of the premises for domestic residential purposes and the owner's provision of a Counsel's opinion that residential use has become lawful, it is considered that there is evidence as a matter of fact that such use has yet not become lawful.

In view of the extent and nature of the existing and potential planning harm arising from the residential use, in the absence of the voluntary resolution of this matter, it is considered appropriate and proportionate to now seek to resolve this matter by means of the service of an Enforcement Notice.