DELEGATED DECISION REPORT

SMD/2017/0021 **Valid 11/01/2017**	**FIELD HOUSE FARM** **DILHORNE ROAD** **FORSBROOK**	**CERTIFICATE OF LAWFUL DEVELOPMENT FOR PROPOSED CONVERSION OF AN ATTACHED EXISTING, REDUNDANT, FARM BUILDING TO PROVIDE ADDITIONAL ACCOMMODATION.** **(CERTIFICATE OF LAWFULNESS - PROPOSED)**

MAIN ISSUES

- Whether or not the existing use, operations and or development as described in the application is lawful.

DESCRIPTION OF SITE

Field House Farm is a large detached farmhouse constructed from red facing brickwork under a plain clay tile roof which occupies a substantial plot on the western side of Dilhorne Road, Forsbrook. The dwelling which is Grade II listed comprises of a T shaped plan form with a detached brick building to the north west. A small single storey stone outbuilding lies at the vehicular entrance to the site. For the purposes of the development plan the site lies outside any designated settlement in an area which is washed over by the North Staffordshire Green Belt.

PROPOSAL

This is a certificate of existing lawful development which seeks confirmation that the partial conversion of an attached existing redundant farm building to provide additional domestic accommodation is lawful. The proposal is to convert the first floor of an attached redundant farm building comprising circa 51 sq. metres of internal floorspace into a bedsit with additional bathroom facilities.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

This is a certificate of lawful use application and for the avoidance of doubt it should be noted that the planning merits of the use, works or operations referred to in this certificate of lawfulness are not relevant, and are not therefore an issue to consider in the context of this application. The decision is based on the 'balance of probability' and rests on the evidence submitted, the facts of the case, and on relevant planning law and takes account of the facts presented both in support of the application and

against but is not assessed in relation to its principle, location, design or compliance with current planning policies

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SMD/2003/0229 Conversion of redundant shippons to light industry. Approved.

SMD/2017/0010 Proposed change of use and conversion of redundant farm building to provide ancillary accommodation. Withdrawn.

SMD/2017/0011 Proposed conversion of part of an attached redundant farm building to provide additional living accommodation. Withdrawn

SMD/2017/0019 Listed Building Consent for the conversion of part of an existing, attached, redundant farm building to provide additional living accommodation including installation of roof lights. Awaiting decision.

SMD/2017/0020 Certificate of lawful development for proposed conversion of an existing, redundant, former cowshed to provide additional accommodation, ancillary to the existing dwelling. Awaiting decision.

CONSULTATIONS

Publicity

Site notice displayed.

Public Comments

No representations received.

Town / Parish Comments

Forsbrook Parish Council object on the basis that this decision would be no different to the recent refusal for Calverhay Farm. The area is green belt and believes you have set a precedent for the decision via the Calverhay Farm refusal.

Dilhorne Parish Council have also provided a view on the basis that the site lies close to the boundary and support the objection of Forsbrook Parish Council.

OFFICER COMMENTS

Section 192 of the Town and Country Planning Act 1990 (the 1990 Act) provides for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate. A certificate is a statutory document certifying the lawfulness for planning purposes, of any proposed use of building or other land, or any operations proposed to be carried out in, on, over or under land.

Section 192 (2) states “If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application”.

The key issue in consideration of this application is whether the proposed building operations would require development requiring planning permission and whether the proposed development would constitute a material change of use requiring planning permission.

Section 55 (1) of the 1990 Act sets out the meaning of development and new development. It states that development means:-

"...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any building or land".

Section 55 (2) identifies operations, that for the purposes of the 1990 Act do not involve development. This includes at Section 55 (2) (a)

"the carrying out for the maintenance, improvement or other alteration of any building of works which:-

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building ..."

Section 55(2)(a)(i) is clear that any internal changes to the building are not development and do not require planning permission. Section 55(2)(a)(ii) adds that external changes only require planning permission where they would “materially” affect the external appearance and character of the building. The judgment in Burroughs Day v Bristol City Council [1996] 1 PLR 78 clarifies that it is insufficient merely that the works should affect the exterior of the building. The test was that they should “materially” affect the external appearance of the building as a whole and not just a part of the building taken in isolation. Little weight was also given to views from unusual or limited vantage points. This judgment therefore clarifies that, to be development requiring planning permission, external changes to a building must materially affect the external appearance of the building as a whole when viewed from publically accessible vantage points. Externally the size and form of the building would remain unchanged. The proposals would require the insertion of a new first floor window in an existing opening and the opening up of a previously bricked up door way at ground level on the north western elevation. Three conservation style rooflights would be inserted in the south western roof slope and a new partly glazed frame would be inserted in the existing first floor opening. These alterations would be operations normally carried out by a builder.

In the present case, the alterations to the exterior of the building would be clearly visible from normal viewpoints within the appellant’s own land but entirely or partly screened from public vantage points. However, although that assists the applicants case, that on its own is not determinative. The building is presently of domestic form and appearance, having a number of windows of domestic scale and character. In my view, the proposed alterations would be very modest in scale and extent

(affecting only around half of the present building) and would conform to the present domestic character of the building. To my mind, on the facts of this case, and in this specific context, the proposed external alterations would not materially affect the external appearance of the building, taken as a whole. On this basis, it is my view that the proposed external alterations would not involve development as defined in the Act.

Turning to the proposed use of the building, the Applicants state that the farm house and farm buildings are not used as a working farm. The house is used by Walk Ministries to provide residential accommodation. Field House Farm (Liberty Farm) is used by Walk Ministries as a small, high-dependency supported housing unit offering a safe environment, facilitating detox from alcohol and drug dependency for participants in the Walk Ministries programmes. Use Class C3 Dwellinghouses is formed of 3 parts including Class C3(b) which makes provision for up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. I am therefore satisfied that the property comprises a “dwellinghouse.”

Section 55 (2) (d) of the Act states that "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of a dwellinghouse as such" shall not be taken to involve development. The applicants stated intention is to use the proposed living space as additional accommodation to that of the existing residential dwelling.

Section 55 has normally been taken to embrace all types of residential use including both primary (habitable accommodation such as living rooms, kitchens and bedrooms) and secondary (games rooms / stores). Therefore, if the use to which an existing building is to be put does not constitute a material change of use or has not become a separate planning unit, it has been accepted as conforming to the definition of “incidental to the enjoyment of a dwellinghouse” and therefore does not / would not require planning permission.

The above has been confirmed in the High Court. In the case of Uttlesford District Council v Secretary of State for the Environment and White [1992] JPL 171 planning permission had been refused for the change of use of a detached garage to a “granny annexe”. The annexe contained all the facilities required for day-to-day living (i.e. bedroom, bathroom and small kitchen) but was to be occupied by a relative of the family living in the main dwelling. The refusal was overturned on appeal, with the Inspector considering that planning permission for the proposal was not required as there was no material change of use, stating: “……the use of the building as a residential annexe to the existing dwelling would involve no material change of use of the dwelling and its curtilage and does not constitute development for which planning permission is required because the use of the planning unit was, and remains, residential. If – which is not the present case – the garage were to be severed from the house or to be independently occupied then, of course, this position would change.” This decision was challenged in the High Court by the local planning authority. The challenge centred on the claimant’s position that the Inspector had erred in law by not considering that the proposed development would result in the creation of a separate planning unit.

However, the Judge found that there was no error in law. He considered that it amounted to no more than an elderly relative to be accommodated within the family home having her own bedroom, bathroom and small kitchen. Whilst this would allow, to some extent, some independence from the rest of the family, there was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. Therefore, there would be no material change of use of the planning unit and planning permission was not required. The application to quash the Inspector's decision was therefore refused. Not held to be conclusuive in deciding whether a material change of use had occurred. It was necessary to take account of the level of care and degree of social interaction.

In the case of Whitehead v Secretary of State for the Environment and Mole Valley District Council [1992] JPL 561 planning permission had been refused for the conversion of a barn to an annexe to accommodate a housekeeper within the substantial curtilage of a dwellinghouse. An appeal against this refusal had been dismissed.

In dismissing this appeal, the Inspector considered that the building could be used for purposes incidental to the enjoyment of the dwellinghouse without a material change of use occurring. However, the use as staff accommodation was considered to not be a purpose incidental to the enjoyment of the dwellinghouse as a new unit of living accommodation would be formed.

The appellant challenged this in the High Court, alleging that the Inspector had failed to determine whether the use of the barn for residential purposes ancillary to the main dwelling constituted development requiring planning permission. Reference was made to the provisions of Section 55(2)(d) of the 1990 Act.

The Judge accepted that if the entire curtilage had been in use for residential purposes, any part of that area could be used for any element of that purpose unless it was in breach of a condition or amounted to a change of use.

He determined that, given the whole purpose of the application was to provide live-in accommodation for a housekeeper, it seemed impossible to hold that the use of the converted building would be anything other than for a purpose incidental to the enjoyment of the main dwelling as a unit of living accommodation. He stated that it mattered not whether the building would contain primary living accommodation. The Inspector's refusal was therefore quashed.

These two judgments show that the real issue in determining whether a residential annexe would be incidental to the main dwelling is the nature of the intended occupancy. If there is some interdependence with the use of the main dwelling, be that a family connection, in the case of a relative, or an employment connection, such as the case of a housekeeper, the use can be incidental regardless of whether the converted building would contain primary living accommodation, provided the occupant(s) would live as part of the same household. This would not result in a material change of use away from the entire site being used as a single dwellinghouse.

In this case only the first floor area of the building would be converted to residential use, the remainder would remain in use for garaging/domestic storage. The submitted floorplans show that the proposed change of use would provide a bed sit. Whilst this would have its own separate external access and bathroom facilities internal access would also be provided to the main house. The proposed bed sit clearly could not be occupied on its own and would have to rely on some of the facilities of the main house. Its physical attachment also means that they would share domestic curtilage and therefore it would be convenient for social interaction between the two buildings. In addition there is only one vehicular access point such that all access and parking would be shared. When the above factors are taken into account it is considered that the proposed use of the outbuilding, as described, would be incidental to the use of the main dwellinghouse. Accordingly the proposal would not entail a material change of use from the present use as a single dwellinghouse with its associated residential curtilage. In light of case law and precedents it is considered that the proposed accommodation would be ancillary to the main dwellinghouse. No change of use would occur and a separate planning unit would not be created. Accordingly, following the principles laid down by the Uttlesford and Whitehead judgments it is considered that the proposed use of the building as set out in this application would not be development and it would not require planning permission. It is therefore concluded that the proposal would be lawful. It is therefore for the occupiers of the main house to comply in order to remain within the terms of the certificate and open to the Council to take enforcement action if that ancillary link were lost.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Teresa Critchlow
Recommendation Date: 8th May 2017

X B.J. Haywood

Signed by: Ben Haywood
On behalf of Staffordshire Moorlands District Council