DELEGATED DECISION REPORT

SMD/2018/0723 **Valid 15/11/2018**	**56 THE FOXHOUND HOT LANE** **BIDDULPH MOOR**	**APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE CONSTRUCTION OF ADDITIONAL CAR PARKING SOUTH WEST OF LICENSED PREMISES** **(CERTIFICATE OF LAWFULNESS - PROPOSED)**

MAIN ISSUES

If the proposed development had been carried out on the date of the application would it have been immune from action and thereby lawful within the meaning of the Act.

DESCRIPTION OF SITE
Old stone built public house on a narrow country lane. Open fields to the south, west and east. The PH has a generous apron of hardstanding that provides parking and an area of curtilage.

THE APPLICATION
The applicant seeks a certificate of lawfulness to confirm that his proposed development would be immune from enforcement action if it were carried out. He wishes to provide a carpark extension on a grassed area to the south west of the PH.

His claim relies on him being able to implement or complete development that he says would be permitted by extant planning permissions granted in 1966 and 1968 – (1830/66 & 2067/68). Essentially it is said that those planning permissions were granted for development that included the provision of car park on both the former garden to the rear and south east of the PH and the current application site – with the first part carried out and implemented on the former garden, he says that this start of works should leave him free at any time to finish the area of car park on the current application site.

Specifically it is said that 1830/66 was an outline planning permission and details relating to those matters reserved were approved under reference 2067/68 on 26th June 1968.

The application was accompanied by copies of both decision notices relating to those permissions; and two drawings both stamped 1830/66 that show a plan to provide a car park extension on the land to the south west of the PH, essentially the current application site, but not on the former garden to the rear of the PH. The application does not provide a copy of any of the plans relating to the permission referenced 2067/68.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

1830/66 Outline planning permission for car park extension to be provided on adjacent land to the south west of the PH. Approved May 1966.

2067/68 Full planning permission for car park extension to be provided on garden area to the rear of PH. Approved 26th June 1968.

13595 Erection of entrance porch. Approved.

CONSULTATIONS

Public Comments

None

Town / Parish Comments
Biddulph Town Council – No Objection

SCC Highway Authority – No objection, subject to conditions.

OFFICER COMMENTS

The applicant's claim is entirely dependent on there being an extant and partly implemented planning permission from the 1960s that now provides for the car park development to be carried out.

He points to 1830/66 which reads as an outline planning permission and 2067/68 that he says was the approval of those matters reserved. While he provides the decision notices for both, there is only one set of plans that relate to the earlier decision.

Fortuitously, considering the age of these permissions, the Council has good quality archived micro fiche slides showing the files for both permission references.

Turning first to the decision notice and plans relating to 1830/66 it is clear that while this proposal was indeed to provide a car park on the current application site, it was only permission in outline. Importantly, the development set out at that outline stage included only the construction of a car park on the current application site as a discrete act of proposed development it did not include the provision of car parking on the garden to the rear and south east of the PH.

As an outline permission granted before 1st April 1969 the provisions of the Planning (Consequential Provisions) Act 1990, Sch.3, para. 1,Section 20 apply and therefore, reserved matters should have been approved not later than the expiration of three years beginning with April 1, 1969. There is no evidence that those reserved matters were approved in time or indeed that any part of the development approved at outline was carried out on the current application site.

The planning permission 2067/68, which it is said by the applicant was reserved matters approval, is clearly an entirely separate full planning permission for an alternative and different scheme of development and bares no relation to the earlier outline consent. The approved development is described on the decision notice as "formation of car park incorporating part of the *existing garden* and also hardcore standing area at *the side of premises*". The accompanying plan shows the location of the car park to be provided on garden to the rear and south east of the PH and the hardcore standing to be provided immediately to the side of the PH building, limited to an areas which exist to this day. The approved scheme did not include the provision of car park on the current application site, instead that is clearly shown as an area to be closed off from the parking with boundary features. Clearly the idea, two years earlier, to provide that area as a carpark had been abandoned. That 1968 permission does not provide for and permit the provision of car park on the current application site. 2067/68 reads as a full 'stand alone' permission with a differing description of development and plans that show a carpark area to be formed to the rear of the public house using the former garden, they do not include the wider area of the current application site.

It seems that rather than pursue the earlier outline scheme and follow it with an application for reserved matters approval, the idea was abandoned in favour of the scheme approved in June 1968 to simply provide the parking extension on the former garden instead, which essentially reflects the way in which the site is currently laid out.

The schemes set out with each permission were instead alternative propositions, either to provide the car park extension on the current application site, not followed up; or on the former garden to the rear of the PH to the exclusion of the land to the south west, finally settled upon and carried out.

It appears clear therefore, the development now proposed could not be carried out lawfully, there is no extant permission that can be relied upon, and if the development were to commence it would not be immune from enforcement action.

CONCLUSION / PLANNING BALANCE

The proposed development could not be carried out lawfully and the authority should refuse to grant a certificate of lawfulness.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Ben Hurst
Recommendation Date: 22.02.2019

X

Signed by: Jane Colley

On behalf of Staffordshire Moorlands District Council