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Item No: 7.3

Application: 230159

Applicant: Mr Tim Whitnell

Agent: N/A

Proposal: Application for a lawful development certificate for existing studio for personal use ancillary to and within the curtilage of owners dwelling house

Location: "Whitesands", Keelars Lane, Wivenhoe, Colchester, CO7 9LA

Ward: Wivenhoe

Officer: John Miles

Recommendation: **Grant LDC** - On the balance of probability, based on the information available to the Council, the studio/outbuilding has been in place for at least four years, as such demonstrating the development is immune from enforcement action under section 171B of the Town and Country Planning Act 1990 (as amended) and as such lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it has been submitted by or on behalf of a Council officer (or their spouse/partner)

2.0 Synopsis

- 2.1 The key issue for consideration is whether the studio/outbuilding is lawful.
- 2.1 The certificate is not an application for planning permission and conditions cannot be attached. The planning merits of the case are not relevant.
- 2.2 Based on the evidence available it is recommended that a Certificate of Lawfulness is granted for the existing studio/outbuilding identified on the submitted plans.

3.0 Site Description and Context

- 3.1 The site contains a single semi-detached residential dwelling which lies within a run of ribbon development along the west side of Keelars Lane.
- 3.2 The host dwelling benefits from a generous rear garden, while to the front of the dwelling there is smaller area laid to lawn and an area of hardstanding for off-road vehicle parking.

4.0 Description of the Proposal

- 4.1 A Lawful Development Certificate is sought to confirm that the existing studio/outbuilding in the dwelling's rear garden is lawful.

5.0 Land Use Allocation

- 5.1 Residential

6.0 Relevant Planning History

- 6.1 None.

7.0 Principal Policies

- 7.1 A Lawful Development Certificate is a legal document which confirms the lawfulness of past, present or future building use, operation, or other development.
- 7.2 The certificate is not an application for planning permission and conditions cannot be attached. The planning merits of the case are also not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law, regulations or judicial authority.
- 7.3 Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development is lawful for planning purposes. If the local planning authority is satisfied, on the balance of probabilities that the appropriate legal tests have been met, it must grant a lawful development certificate. Where an application has been made under Section 191 of the

Town and Country Planning Act 1990 (as amended) ["the Act"], a lawful development certificate only confirms what is lawful as at the date of the certificate application.

- 7.4 The amended section 194 of the 1990 Act states that it is an offence to provide false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

8.0 Consultations

- 8.1 Due to the circumstances of the case no stakeholders were required to be consulted on the application.

9.0 Parish Council Response

- 9.1 Wivenhoe Town Council provided the following comments:

WTC wishes to make sure that the building is in the village envelope.

Note: As a legal determination, usual material considerations cannot be taken into account.

10.0 Representations from Notified Parties

- 10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. No consultation responses have been received.

11.0 Report

- 11.1 The main issues in this case are whether the existing development that is the subject of this application is lawful.

Assessment

- 11.2 Section 191 of the Act provides a person with the opportunity to apply to the Local Planning Authority (LPA) for a Certificate to confirm that an existing use or building operation is lawful. The application is an evidence-based application and not a determination of the planning merits of the proposal. The applicant is required to describe the proposal with sufficient clarity and precision to enable the LPA to understand exactly what is involved in the claim. The burden of proof for establishing lawfulness rests firmly with the applicant, and the evidential test applied is on the "balance of probabilities". The question can be phrased "is it more likely than not that the existing development is lawful?" The LPA should accept the applicant's evidence, provided that it is sufficiently precise and unambiguous, unless they have evidence to contradict or undermine it. Section 191(4) of the Act provides that if the LPA is satisfied on the evidence provided with the application that the existing development is lawful, they shall issue a certificate; in any other case they shall refuse the application.

- 11.3 While residential outbuildings often constitute ‘permitted development’ in that they don’t require express planning permission, to benefit from the permission(s) granted by the General Permitted Development Order certain conditions and limitations need to be met. These include limits on height. In this case the outbuilding exceeds the height limits set out under the General Permitted Development Order and therefore would have required express planning permission from the LPA at the time of its construction, however it is understood no such permission was obtained.
- 11.4 S171B (1) of the 1990 Town and Country Planning Act (as amended) stipulates however that for any building or engineering in, on, over or under land, such as is the case here, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. This LDC was applied for in order to establish whether the studio/outbuilding has been substantially built and in situ for such a period of time that it is considered lawful for planning purposes under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- 11.5 The application requires sufficient information to support the claim submitted. The assessment of the application is based upon the evidence submitted rather than an assessment through planning policy.
- 11.6 The applicant’s claim is that the building works for the outbuilding were substantially completed by 31st January 2005. A letter identified as being from the occupier of the adjoining property state that the outbuilding in question was constructed in ‘2004/5’.
- 11.7 There is no evidence to refute these claims, on the contrary there is evidence available which appears to support the claims made. Available aerial imaging appears to show the outbuilding in question in place in 2006, 2009, 2012, 2014 and 2018.

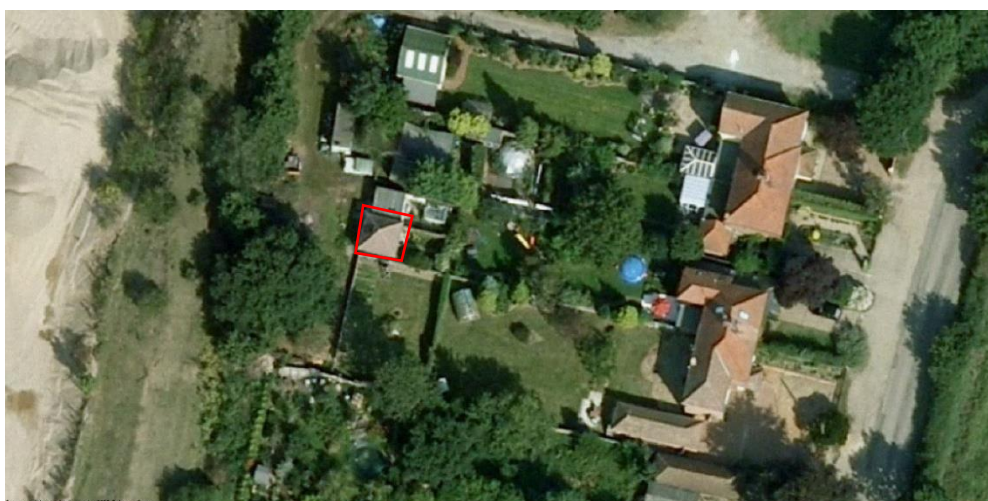


Figure 1: Aerial image from 2006.



Figure 2: Aerial image from 2009.



Figure 3: Aerial image from 2012.



Figure 4: Aerial image from 2014.

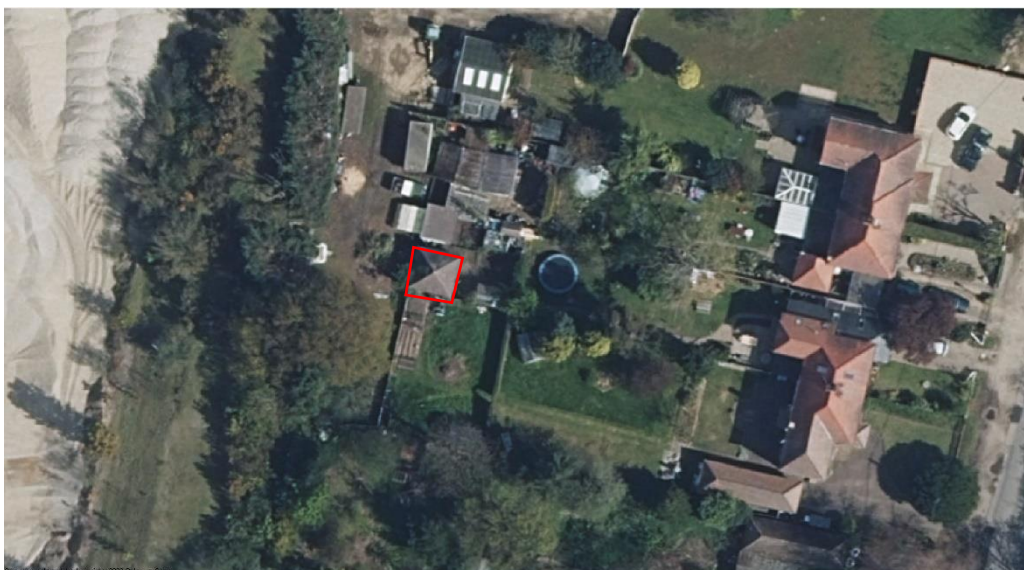


Figure 5: Aerial image from 2018.

12.0 Conclusion

- 12.1 On the basis of the information submitted and otherwise available it is concluded that, on the balance of probabilities, the outbuilding has been substantially completed for a period well in excess of the 4 years required to be immune from enforcement action.

13.0 Recommendation to the Committee

- 13.1 The Officer recommendation to the Committee is that the application for a lawful development certificate is APPROVED for the following reason:

Under the key statutory framework for such applications and their determination, as set out in sections 191-193 of the Town and Country Planning Act 1990 (as amended) the development is on the balance of probabilities found to have been substantially complete since at least 2008. With reference to the Town and Country Planning Act 1990 Section 191, as amended by section 10 of the Planning and Compensation Act 1991 and section 171B of the Town and Country Planning Act 1990 (as amended) the time limit for any enforcement action has therefore expired and regardless of the structure's lawfulness at the time of construction, owing to the passage of time the studio/outbuilding is found to be lawful.

Draft Certificate:

COLCHESTER BOROUGH COUNCIL hereby certifies that on 3rd February 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined in red on the plan attached to this Certificate, would be lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

It has been demonstrated on the balance of probabilities that the studio/outbuilding has been substantially complete for a period in excess of four years, as such demonstrating the development is immune from enforcement

action under section 171B of the Town and Country Planning Act 1990 (as amended) and as such lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

FIRST SCHEDULE

Existing studio/outbuilding for personal use ancillary to and within the curtilage of the dwelling known as “Whitesands”, Keelars Lane, Wivenhoe, Colchester, CO7 9LA, as shown on Drawing Number ‘Studio, Whitesands – 001’ and as shown on the submitted undated photo (indexed as ‘SITE PHOTO’).

SECOND SCHEDULE

“Whitesands”, Keelars Lane, Wivenhoe, Colchester, CO7 9LA