
Subject: DOV/13/00163 – CERTIFICATE OF LAWFULNESS (PROPOSED)
FOR THE ERECTION OF A DETACHED GAMES ROOM AND
HOME OFFICE AND DETACHED GARAGE WITHIN THE
CURTILAGE OF 55 WESTCOURT LANE, SHEPHERDSWELL

Meeting and Date: Planning Committee – 13 March 2014

Report of: Head of Regeneration and Development

Members are advised that the decision to grant a Certificate of Lawfulness for this development as decided at Planning Committee on 5 September 2013 is being overturned.

Contact Officer: Dave Robinson, extension 2121.

1. Summary

The application is being reported to Planning Committee as it was previously called in by a Councillor and the Head of Regeneration and Development considers that Members should be provided with an update.

2. Relevant Planning History

2.1 55 Westcourt Lane has an extensive planning history, the most recent as follows:

DOV/05/00924 – Alterations to existing vehicle access and formation of new access (involving excavation works) and erection of garage (existing to be demolished) – Withdrawn

DOV/05/01276 – Formation of new vehicle access (involving excavation works) – Granted

DOV/08/00577 – Erection of a detached dwelling – Refused (Dismissed at appeal)

DOV/09/00924 – Erection of a detached dwelling – Withdrawn

DOV/10/00202 – Retrospective application for the widening of the existing vehicular access – Granted

DOV/10/01115 – Certificate of Lawfulness (Proposed) for the reduction in levels and the widening of existing driveway – Granted

DOV/11/00361 – Erection of a detached bungalow and garage (existing barn to be demolished) (amended plans) – Granted

DOV/11/00361/A – Amendments to approve planning permission DOV/11/00361 – construction of partial basement – Refused

DOV/12/00569 – Extension to driveway – Granted

DOV/13/00605 – Section 73 application to vary condition 2 of planning permission DOV/11/00361

3. Third Party Responses

- 3.1 Whilst applications for Certificates of Lawfulness (Proposed) are not statutorily advertised, the Council received one letter from a third party expressing concern over the proposed future use of the outbuilding and garage. Since the application was reported to Planning Committee a number of neighbours have complained about the Council's decision to grant the Certificate of Lawfulness.

4. The Site

- 4.1 The site lies within the village confines of Shepherdswell. 'Twenty Acre Shaw', which is designated as a Site of Nature Conservation Interest (SNCI), lies to the southwest corner of the site and extends in a southerly direction away from the site.
- 4.2 The form and pattern of development along this part of Westcourt Lane comprises a mixture of bungalows and two storey dwellings, set about 10m – 15m back from the roadside frontage. Most of the dwellings are sited within large plots which extend to the rear. The site is within the village confines, which runs along the rear boundaries of the residential curtilage of the properties either side of Westcourt Lane.
- 4.3 The gardens along the southern side of Westcourt Lane and to the east of the application site are linear in pattern and fairly uniform in length. No. 55 is a two-storey detached dwelling. The garden at no. 55 has a length of about 140m from the edge of Westcourt Lane to its rear boundary.
- 4.4 Planning permission was recently granted under DOV/11/00361 for a detached bungalow in part of the rear garden of 55 Westcourt Lane. The new dwelling would be sited between the existing dwelling and the remainder of the garden to 55 Westcourt Lane. The existing access to the existing dwelling, the new dwelling and the remainder of the rear garden that still serves 55 Westcourt Lane would be shared and not altered. The entire curtilage of 55 Westcourt Lane was outlined in red and identified as the application site. One of the conditions attached to the grant of planning permission removed all Permitted Development rights for the entire site, including 55 Westcourt Lane.
- 4.5 Until the development for the new dwelling commenced 55 Westcourt Lane would have still enjoyed its normal permitted development rights. Fencing was erected to enclose an area of garden land immediately to the rear of 55 Westcourt Lane. This means of enclosure could have been erected under the owners permitted development rights and did not comprise a start to the proposal for the dwelling permitted under DOV/11/0361. The remainder of the garden land, including the site of the new dwelling remains open and provides the residential garden or domestic curtilage to 55 Westcourt Lane.
- 4.6 The application submitted was for a Certificate of Lawfulness (Proposed) under Section 192 of the Town and Country Planning Act (As Amended) and is only to be determined on matters of fact. Applications of this nature are determined solely by reference to Schedule 2 Part E and E 1 of the Town and Country Planning (General Permitted) Development Order 1995 (as amended) which sets out those developments within the residential curtilage (garden) of a dwelling house which may be undertaken without the need for planning permission (i.e. as permitted development). The determination of a Certificate of Lawful Development (Proposed) is based on matters of fact and evidence. Planning merits are not material and have no relevance. Such applications are not subject to consultation. A decision is solely a question of whether or not planning permission is required for the proposed works and whether it is development permitted by the Order.

- 4.7 When this matter was reported in September 2013, legal advice had been sought on the relevance to the determination of the application of 'intention' (how the building might be intended to be used) and the enclosure of part of the land by the erection of fencing. The advice confirmed that that intention was not a material factor here as there was no material evidence concerning the intended use of the building which contradicted the proposed use being for purposes incidental to the enjoyment of the dwellinghouse. The enclosure of part of the garden land would also be immaterial as the means of enclosure (fence) would have been permitted development and the fenced land would remain part of the residential curtilage.
- 4.8 Following the report to Planning Committee and prior to issuing the Certificate of Lawfulness, it became clear that development had started on the bungalow approved under DOV/11/00361. The Council sought further legal advice on this matter which confirms that the commencement of DOV/11/00361 has removed permitted development rights in accordance with the condition attached to the planning permission. Legal advice confirms that the subsequent variation of condition permission (DOV/13/0605) had not affected that decision.

5 The Proposal

- 5.1 The application seeks a lawful development certificate for the erection of a detached games room and home office and garage within the rear garden of 55 Westcourt Lane. The games room and home office and garage would be used for residential purposes to provide incidental (or additional) accommodation to the dwelling house.

6. The Legislation

- 6.1 The development falls to be considered under the General Permitted Development Order 1995 (as amended) at Schedule 2 Class E, which identifies circumstances under which curtilage buildings can be erected under permitted development.

7. Recommendation

- 7.1 Having considered all of the relevant criteria, it is considered that as a matter of fact as a condition attached to a planning permission removed permitted development rights from the entire curtilage of 55 Westcourt Lane in respect of the erection of a new dwelling and this development had been implemented before the development referred to in the Certificate of Lawful Development had been carried out that for the reasons outlined in this report, planning permission is now required for the proposed games room, home office and garage and that the Certificate of Lawfulness (Proposed) cannot be granted.

8. Background Papers

None