

Case Officer: Katherine Daniels

Recommendation:

Applicant: Dr Jane Fletcher

Proposal: Certificate of Lawfulness of Existing Use - To determine the building opposite the main house, known as 'The Shed,' has been in lawful use as part of the main dwellinghouse

Expiry Date: 14 September 2023

Extension of Time: 14 September 2023

1. APPLICATION SITE AND LOCALITY

1.1. The application site is on the northern edge of the village of Sibford Ferris. The site has a combined access to serve both Hill House and the Dower House. These two properties are understood to have been in the ownership of the same family for a long period of time. To the south of the access lies a building known as the shed. This appears to be a former agricultural barn associated with the two properties.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

2.1. The proposal is for the certificate of lawful development (existing) to demonstrate the shed building has been in lawful use as part of the main dwelling house known as Hill House. The applicants have submitted affidavits from both the neighbouring property at the Dower House, the father of the applicant, and a local resident in Burdrop.

3. RELEVANT PLANNING HISTORY

3.1. There is no planning history directly relevant to the proposal

4. PRE-APPLICATION DISCUSSIONS

4.1. No pre-application discussions have taken place with regard to this proposal

5. RESPONSE TO PUBLICITY

5.1. This application has been publicised by letters sent to the ward Councillors and the Parish Council. The overall final date for comments was **21 July 2023**.

5.2. The comments raised by third parties are summarised as follows:

- The Shed appears to be in an abandoned state and not a habitable state until works had been carried out in 2021.

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register

6. RESPONSE TO CONSULTATION

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. Sibford Parish Council: Have no objection to this application

OTHER CONSULTEES

- 6.3. Ward Councillors: No comments received.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Material Planning Considerations

- Section 191 of the Town and Country Planning Act 1990 (as amended)
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. APPRAISAL

- 8.1. The key issue for consideration in this case is whether or not the development is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 (as amended).
- 8.2. A Certificate of Lawfulness for an existing use or development can only be granted under section 191 of the Town and Country Planning Act 1990 (as amended) if the applicant can prove, on the balance of probability, that the use, operation or other matter is lawful because no enforcement action can be taken against it (either because it does not involve development or require planning permission or because the time for the enforcement action has expired or for any other reason), and because it does not constitute a contravention of any of the requirements of any enforcement notice currently in force.
- 8.3. Government guidance states that, *'in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'*.
- 8.4. The applicant has provided 4 statements all witnessed by a solicitor. One is written by the applicant, one by the sister of the applicant, one by the father of the applicant, and one is from another local resident within the Sibford/Burdrop area.
- 8.5. Taken together, these four documents state that the building subject of this application has been used for purposes ancillary to Hill House, and for residential purposes. The stated use of the building includes (and not limited to) utility room, playroom, painting, reading, storage of household items (bikes, garden equipment).
- 8.6. There has been an objection to the proposal, commenting that given the state of the building prior to 2021 it was unsuitable for residential use. However, its state of repair is not determinative of its lawful planning use. The objector has submitted photographs of the building, but no clear information has been submitted to demonstrate the site has been used for non-residential purposes.
- 8.7. It is clear from other evidence available that new windows and doors were inserted between 2016 and 2022 in what appear from the available evidence to have been existing openings.

- 8.8. Irrespective of when this work was carried out, the focus of this application is the lawful use of the building and the question for this application is whether the building within the red line has been used for purposes ancillary to that of the main dwelling, Hill House. There is no evidence to suggest that it has not been. The available evidence indicates it has been capable of use, and its appearance and form and its spatial relationship with surrounding built form suggests an ancillary use to a dwelling. The above factors do not suggest it is unrelated to a dwelling. For a certificate not to be issued in this instance there would need to be evidence that the building subject of the application had been used either as an independent dwelling or for commercial purposes not ancillary to the dwelling. There is no evidence available to the Council that either is the case.
- 8.9. In this instance, therefore, and on the balance of probabilities, it is considered that across the witnessed statements/statutory declarations sufficient information has been provided to demonstrate that the Shed has been used or capable of use for purposes ancillary to Hill House for over 4 years. The Council has no evidence to the contrary.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. On the balance of probabilities, the Local Planning Authority is satisfied that the available evidence indicates that the Shed has been used or capable of use for purposes ancillary to Hill House for over 4 years as set out in Section 171B of the Town and Country Planning Act 1990 and no enforcement action could be taken in response to this breach of planning control.

10. RECOMMENDATION

That the development does not require planning permission.

First Schedule

The use of the building defined by the red line on the Site Location Plan submitted with this application for purposes ancillary to that of Hill House

Second Schedule

The Shed Hill House Main Street Sibford Ferris Oxfordshire OX15 5RA

Third Schedule

Having regard to the information submitted by the applicant and on the basis that there is a lack of clear evidence to the contrary, the Local Planning Authority is satisfied, on the balance of probabilities, that the site named in the Second Schedule and identified in the accompanying plan has been used continuously for at least four years for purposes ancillary to those of Hill House Main Street Sibford Ferris Oxfordshire OX15 5RA.

Case Officer: Katherine Daniels

DATE: 9 October 2023

Checked By: Nathanael Stock

DATE: 20.10.2023
