

UTT/1599/11/CLE (Saffron Walden)

(Referred to Committee by Cllr Perry. Reason: Illegal impact on the community).

PROPOSAL: Certificate of lawfulness for existing use as a separate dwelling house.

LOCATION: 5A Birdbush Avenue, Saffron Walden.

APPLICANT: Mr C O'Malley.

AGENT: Tee Solicitors.

GRID REFERENCE: TL 537-374

EXPIRY DATE: 3.10.2011

CASE OFFICER: Joe Mitson

APPLICATION TYPE: Minor

1. NOTATION

1.1 Within Development Limits.

2. DESCRIPTION OF SITE

2.1 The site comprises an extended semi detached dwelling occupying a corner location. The original dwelling and extension have separate rear gardens with parking provided in the rear garden for 5A.

3. PROPOSAL

3.1 The proposal comprises a certificate of lawfulness for the existing use of the extension as a separate dwelling house. The single issue to determine is whether the applicant has demonstrated that on the balance of probabilities the dwelling for sufficiently long to be lawful and exempt from enforcement action planning merits are not relevant.

4. APPLICANT'S CASE

4.1 Permission was granted under UTT/0589/04/FUL for the construction of an extension to the dwelling and parking spaces as an extension/annexe. Since 2005 it has been in continuous use as a separate dwelling. No enforcement action can now be taken and a lawful development certificate should be granted. Statutory Declarations have been submitted by a former tenant and the applicant together with a copy of a letter from a Letting Agent dated February 2005.

5. RELEVANT SITE HISTORY

5.1 UTT/0589/04/FUL granted permission for the erection of a two storey side extension and the creation of parking spaces. This followed a refusal for a two storey extension under reference UTT/2184/03/FUL. Application UTT/1251/05/FUL was a retrospective application to change the use of the annexe to a separate dwelling and was refused on the grounds that the creation of a separate dwelling would have resulted in a cramped form of development out of character with the surrounding area. UTT/2245/10/FUL refused an application

for use of the extension as a separate dwelling on the grounds of a cramped form of development and lack of parking provision.

6. POLICIES

6.1 National Policies

None relevant to the submission.

6.2 East of England Plan 2006

None relevant to the submission.

6.3 Essex Replacement Structure Plan 2001

None relevant to the submission.

6.4 Uttlesford District Local Plan 2005

None relevant to the submission.

7. PARISH/TOWN COUNCIL COMMENTS

- 7.1 Saffron Walden Town Council objects on the grounds that the application to extend the property has been abused by now recognising the annexe as a separate dwelling and questions the legality of such a move.

8. CONSULTATIONS

Legal Officer supports the certificate.

9. REPRESENTATIONS

- 9.1 Neighbour notification period expired 8th September 2011. Two letters received from neighbours objecting on the grounds that the submission of planning applications for use as a separate dwelling recognise that the extension has been used without planning permission, the Council has not been inactive in this time, the proposal conflicts with a letter sent by the Council in August 2007 stating that it appears the breach has reoccurred, parking problems continue and parking provision is inadequate. Did not object to the extension but would have objected to the use as a separate dwelling, not disputing its use as a separate dwelling as it appears to have been a separate dwelling for most of the time since it was built.

10. APPRAISAL

The single issue to consider in the determination of the application is:

- A** Whether the extension was first used as a separate dwelling more than four years ago and remained as a separate dwelling thereafter.

- 10.1 The submission seeks a certificate of lawfulness for use of the extension as a separate dwelling. Permission was granted in May 2004 for the extension and the addition itself is lawful. However, the applicant's assertion is that the extension has been used as a separate dwelling for a continuous period in excess of four years and is therefore an established independent dwelling.

- 10.2 The certificate is supported by a Statutory Declaration by the applicant. It states that he has been the owner throughout the relevant period, that works commenced in July 2004 and the second fix and completion took place in November 2004. At

the beginning of 2005 the extension (now known as 5A) was rented by a tenant until August 2005. A Letting Agent, Front Door Property Management Limited, was engaged to find a tenant following this and a second tenancy was secured in August 2005, until June 2010. The property continues to be occupied by a tenant.

- 10.3 A copy of the tenancy agreement from August 2005 has been submitted together with a Statutory Declaration by the second tenant. This states that he agreed the tenancy in August 2005 and stayed until April/May 2010 when it is believed another tenant took over. During the occupation no action was taken by the Council to object to the occupation. The occupation was continuous throughout the period of August 2005 to April/May 2010 and 5A was entirely separate from no. 5.
- 10.4 Based on the information submitted a convincing case has been made to demonstrate on the balance of probabilities that 5A has been in use as a separate dwelling for a continuous period in excess of four years. The tenant for the majority of that period and the owner of the property have signed Statutory Declarations and the Letting Agent letter corroborates the dates. Although objections have been submitted no contrary evidence has been provided and the property records held also substantiate the case. Furthermore, the refusal of planning permission for the use of the extension as a separate dwelling was based on policy grounds which are not relevant to this certificate submission.

11. CONCLUSION

The following is a summary of the main reasons for the recommendation:

- A A convincing case has been submitted to demonstrate that on the balance of probabilities the property known as 5A Birdbush Avenue has been in continuous use as a separate dwelling for a period in excess of four years.

RECOMMENDATION –GRANT THE CERTIFICATE

Take notice that Uttlesford District Council in exercising its powers as Local Planning Authority hereby certify that on 8th August 2011 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto as identified in the plan attached to this certificate were lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 for the following reason:

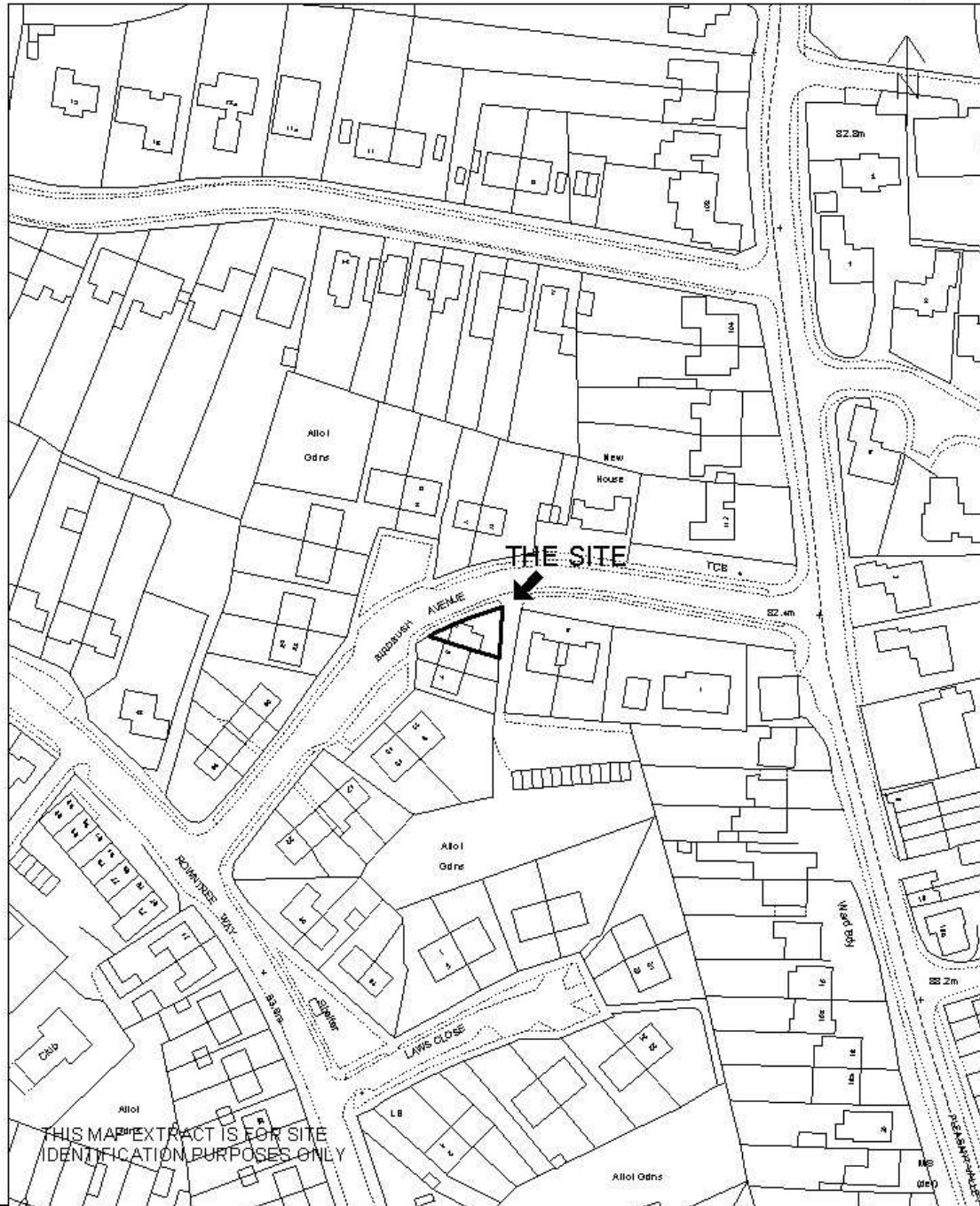
The applicant has demonstrated on the balance of probabilities that the site has been used as an independent dwelling for a period in excess of four years.

FIRST SCHEDULE

The use of the building as a separate, independent dwelling is lawful and as such the proposal constitutes a lawful use and a Certificate of Lawfulness for an Existing Use is granted in respect of this use.

SECOND SCHEDULE

5A Birdbush Avenue, Saffron Walden, Essex.



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DATE 06/10/2011

MAP REFERENCE: TL5337SE

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