

UTT/1335/11/CLP (Ugley)

(Referred to Committee by Cllr Rich. Reason: Impact of locality, design of building-conventional application should be submitted).

PROPOSAL: Certificate of lawfulness for proposed erection of 5 dwellings pursuant to planning permission granted for 6 bungalows on 22nd September 1936.

LOCATION: Land at Cambridge Road, Ugley.

APPLICANT: Mr & Mrs Beevis.

AGENT: Sworders

GRID REFERENCE: TL 513-282

EXPIRY DATE: 31.08.2011

CASE OFFICER: Joe Mitson

APPLICATION TYPE: Other

1. DESCRIPTION OF SITE

1.1 The application site comprises two parcels of land fronting onto Cambridge Road with two dwellings in between set well back from the highway behind long front gardens.

2. PROPOSAL

2.1 The application is certificate for proposed development relating to the erection of a 5 bungalows pursuant to planning permission granted for six bungalows in 1936.

3. APPLICANT'S CASE

3.1 The site comprises 1.8 acres and the application seeks to establish that a 1936 planning permission for six bungalows has been implemented in accordance with the approved details, by virtue of the construction of one of the approved bungalows. In such circumstances the permission will remain extant whereby the applicant can lawfully construct the remaining five bungalows in accordance with the permission.

3.2 Details of the 1936 permission have been submitted showing the approved elevations, floor plans, cross sections and block plan of the bungalows. The position and siting of the bungalows is shown as are the existing bungalow. Only one of the bungalows was constructed which is the southernmost dwelling.

3.3 From inspection of Council records it is apparent that this particular dwelling was constructed pursuant to the approved plans, adhering to the amended 45 degree roof pitch. Subsequent works have however been undertaken to the dwelling. UTT/0340/82 included the removing of the pitched roof from the rear extension, demolishing the lean to utility room extension, the removal of the chimney stack to roof level and extending the width of the kitchen building. The roof was also subject to conversion which included raising the rear section of the roof and inserting dormers within the front roof plane.

- 3.4 From the documents in the possession of the applicant and from careful inspection of both planning and building control records held by the Council, on the balance of probability, St Aubyns was constructed pursuant to the 1936 permission. The permission has therefore been implemented and therefore remains extant and as the site remains clear of built form and able to accommodate the development, the applicant is able to lawfully implement the permission and construct the remaining five bungalows of the 1936 permission.
- 3.5 In regard to historical planning permissions, case law has established that those granted pre the 1947 Planning Act can, if extant, be lawfully implemented in the same way as post 1948 permissions. Squires Bridge Homes Ltd submitted a certificate for three dwellings in the village of Ewhurst, Surrey, where only three dwellings were built following the approval for 6 in 1933. The application was refused by Waverely Borough Council but allowed on appeal in March 2002. In summary the Inspector considered that the 1947 Act permitted the completion of approved development commenced before the appointed day and cited Marks and Spencer v Ltd London County Council 1953. This case demonstrated that if pre war development had commenced in much the same terms as provided for in the present sec. 56 (4) definition of material operations, then it could be completed. Therefore the Inspector concluded that the development of the six houses had been commenced by the erection of three of them. There was no evidence of the permission being abandoned or extinguished by the erection of a different development, and therefore the inspector granted the LDC.
- 3.6 The Inspector concluded that the site remained capable of implementing the permission, the permission remained in force and the proposal to complete the development was lawful. Accordingly as the 1936 permission on this site has been implemented in accordance with approved details and in the absence of any evidence to suggest that the permission has been abandoned or extinguished by the erection of a different development the five remaining bungalows pursuant to the 1936 permission can be undertaken lawfully within the scope of the permission.

4. RELEVANT SITE HISTORY

- 4.1 UTT/0340/82 granted permission for a loft conversion and kitchen extension.
UTT 0333/86 granted permission for a new detached garage.

5. POLICIES

5.1 National Policies

None relevant to the submission.

5.2 East of England Plan 2006

None relevant to the submission.

5.3 Essex Replacement Structure Plan 2001

None relevant to the submission.

5.4 Uttlesford District Local Plan 2005

None relevant to the submission.

6. PARISH COUNCIL COMMENTS

- 6.1 Stansted Parish Council object and do not agree to it being dealt with under the 1936 permission. Would wish it to be the subject of 2011 design regime.

7. CONSULTATIONS

Legal Officer has reviewed the application and supports the granting of the certificate.

8. REPRESENTATIONS

- 8.1 Neighbour notification period expired 10th August 2011. Four letters received objecting on the grounds that ribbon development would ensue, adverse impact on the quality of the village and environment, lead to sporadic development, the plots have no access and new access would affect highway safety, some of the land is beyond the Development Limits, seek conditions, hard to believe an application of such an age and so incomplete can still be relevant today, the land is landlocked.

9. APPRAISAL

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

A Whether the erection of one bungalow granted under an application for a total of 6 bungalows in 1936 implements the consent and allows for the erection of the other 5 bungalows.

- 9.1 The submission seeks a certificate of lawfulness for the erection of 5 dwellings pursuant to planning permission granted in 1936. Under that permission 6 bungalows were approved, only one of which was built. The question is therefore whether it would be lawful to erect the remaining bungalows.
- 9.2 The applicant states that to the best knowledge available the dwelling erected was built in accordance with the approved plans. The Council do not hold detailed records dating to that time and there is no information relating to whether any conditions were imposed or discharged. However, on the basis of the submission, and with no information to the contrary, it is accepted that the development appears to have commenced lawfully.
- 9.3 Furthermore, there is no evidence to suggest that the permission was ever abandoned or extinguished despite the time since approval was granted. The land remains available for development and therefore in theory the approved buildings could be erected.
- 9.4 It has been established in case law that where a development has lawfully commenced the time between commencement and re-commencement is not an issue provided the unimplemented part is not clearly severable from the implemented part of that permission. Whilst in this case there is boundary treatment separating the implemented and non implemented sites, it cannot be argued that the site has become severed and the development could feasibly take place. It has also been established that extant permissions granted prior to 1947 can be lawfully implemented in the same way as post 1948 decisions.
- 9.5 It is therefore concluded that on the evidence available and on the balance of probability, the permission granted in 1936 for the 6 dwellings was implemented lawfully and could be carried out on the site. There is no evidence to make a case that the permission was abandoned or extinguished and therefore the remaining development could be lawfully undertaken.
- 9.6 It is noted that there have been objections submitted against the application. However, the majority of these relate to subjective comments on planning grounds

that cannot be taken into account in this legal submission. Although changes have taken place on the site and surrounding land the dwellings could conceivably be constructed in accordance with the 1936 permission. The approved dwellings do not appear to have vehicular accesses and may not comply with current building standards; however, these issues are beyond the scope of this submission.

10 CONCLUSION

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

A convincing case has been submitted to demonstrate that on the balance of probabilities the development of 6 houses approved in 1936 commenced in accordance with the approved plans, the permission was not extinguished or abandoned and the land remains capable of accommodating the approved development. In light of the absence of information to the contrary the certificate can be issued.

RECOMMENDATION –GRANT THE CERTIFICATE.

Take notice that Uttlesford District Council in exercising its powers as Local Planning Authority hereby certify that on 6th July 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:

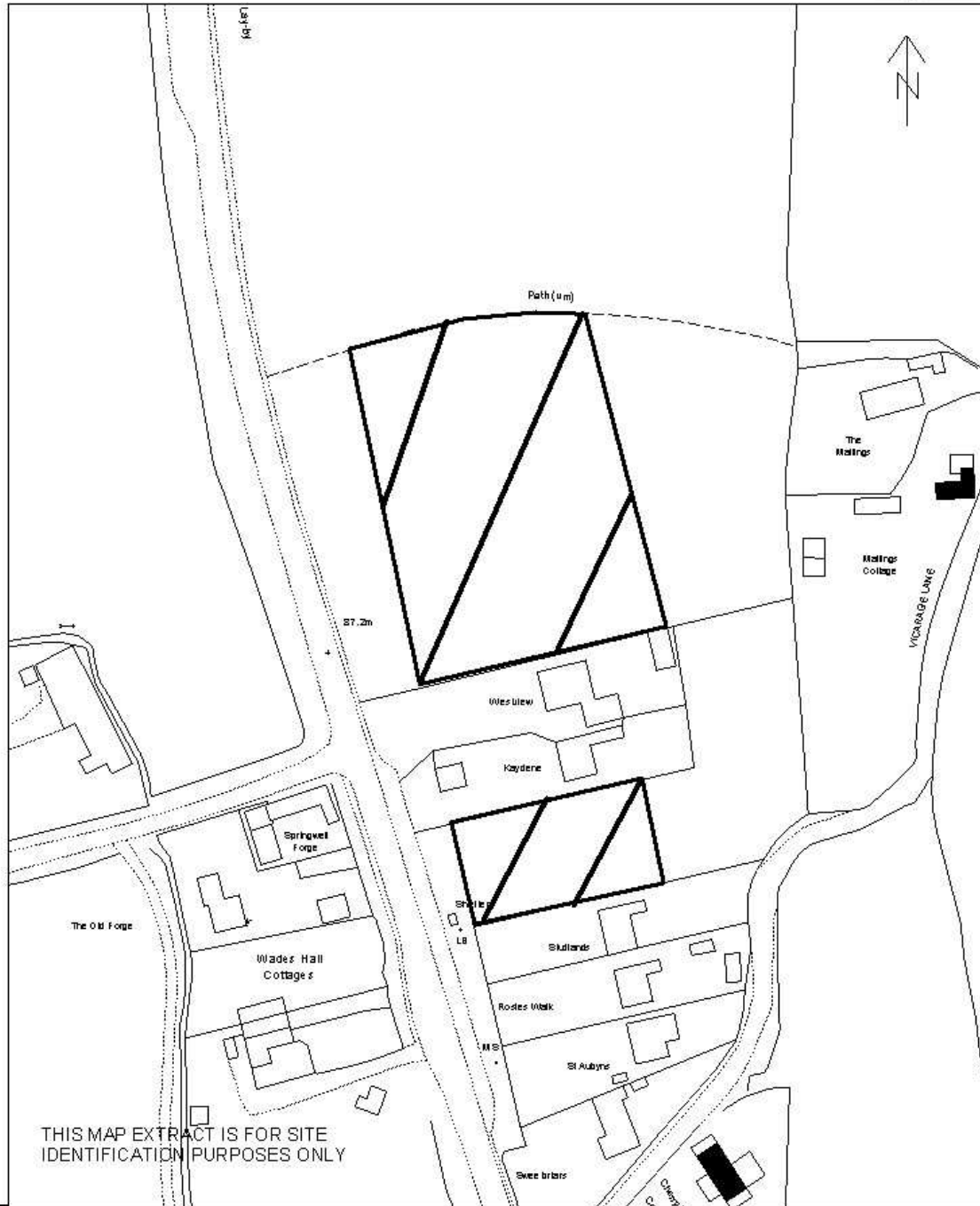
The applicant has demonstrated on the balance of probabilities that the site known as Land at Cambridge Road, Ugley, has been the subject of an implemented permission for the erection of six bungalows through the erection of one bungalow and as a result the permission remains extant.

FIRST SCHEDULE

The proposed erection of five dwellings pursuant to planning permission granted for 6 bungalows on 22nd September 1936 would be lawful through that extant permission. As such the proposal would constitute lawfully constructed operations and a Certificate of Lawfulness for a Proposed Development is granted in respect of these operations.

SECOND SCHEDULE

The land known as Land at Cambridge Road, Ugley, Essex.



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DATE 07/10/2011

MAP REFERENCE: IL5128SW

SCALE: 1:250