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Our Ref: DC14/1541/CLP/idp
Your Ref: TJN/179680.1

18th July 2014

Dear Sirs,

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE RE LAND AT LODGE FARM LETHERINGHAM

I refer to the application for a certificate of proposed use or development (CLOPUD) made on behalf of your clients Mr and Mrs Bickerton and dated 8 May 2014 (received 13th May). The land to which this application relates is shown edged in red on the attached plan. The application on its face seeks confirmation of the lawfulness of erecting a 1.5 metre high fence around the buildings which are identified on the plan by numbers 1, 2, 5, 6, 7, 8,9,10, 11, 12. This application has been referred to me in accordance with the council's scheme of delegation.

The background to this application is unusual in that your clients are not the owners of the land, but wish for their own purposes to know whether the buildings are within the curtilage of Letheringham Lodge, a listed building. Clearly their hope and expectation, based on professional advice that they have received, is that I will conclude that the buildings in question are all curtilage listed and, therefore, that I will refuse the application.

The legislation does not require an applicant for a certificate of lawfulness to own, or indeed have any legal interest in the application site. I have, therefore, determined this application as I would any other. I note that you have informed the landowner, Mr P. Mills, about this application and given him copies of the essential documents and I will likewise send a copy of this decision letter to him. I am grateful to Mr Mills for allowing my colleagues Ben Woolnough (Senior Planning and Enforcement Officer) and Robert Scrimgeour (Senior Design and Conservation Officer) to visit the application site in order to investigate the application.

In determining this application, I have taken account of the following documents, as well as the contents of the application and your covering letter of the same date;

1. The opinion of Richard Harwood QC (instructed by your firm to advise your clients).
2. The report of Michael Collins, Listed Building Planning Consultant (also instructed to advise your clients).
3. The written observations of Mr Woolnough and Mr Scrimgeour following their site visit and
4. Letter from English Heritage to the Council dated 20 June 2014.

contd

The application site and its context

Letheringham Lodge, now owned and occupied by your clients, was listed on 16th March 1966. The list description simply describes the Lodge itself. It is a former hunting lodge, described on the list as dating from the sixteenth century, but recent evidence indicates that part of the timber frame dates from the late fifteenth century. The Lodge has a complex and interesting history which has been extensively researched by Mr Collins. The Lodge and its surrounding land and buildings appear to have been in common ownership and used as a farm and associated buildings for all of the twentieth century. In 2010 the Lodge was sold with the buildings numbered 3 and 4 to a Mr Wright who in turn sold to your clients in 2013. The remainder of the land, including buildings 1, 2, and 5 to 12 inclusive, were retained by a company which is owned by Mr (and Mrs) Mills.

Legal Issues

The Town and Country Planning (General Permitted Development) Order 1995 Schedule 2 Part 1 Class A provides that the erection of a fence less than 2 metres in height which is not adjacent to a highway will generally constitute permitted development. However, an exception to this principle applies under Class A where the fence etc. would involve development within the curtilage of a listed building.

As Mr Harwood QC says in his opinion (pages 5-6 paragraph 21 onwards), the effect of Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as interpreted by case law is that a building is curtilage listed if it is located within the curtilage of the listed building, forms part of the land and has done so since 1 July 1948, and is ancillary to the principal listed building. The definition of the curtilage of a building and the issue of whether the building is ancillary to the principal building are logically separate but often in practice inter-related.

The term "curtilage" covers land and buildings which are part and parcel of the land comprised with a building. The area covered may be extensive and its determination is a question of fact and degree. The primary focus is on the curtilage at the date of listing and land remains within the curtilage even if it is subsequently separated out in physical and occupational terms (R-v-London Borough of Camden ex parte Bellamy 1991 JPL 255).

Analysis

Although the Lodge and Lodge Farm are now in separate ownership and occupation, at the time of listing the buildings now associated with Lodge Farm were dependent on Letheringham Lodge. Letheringham Lodge and Lodge Farm (as it is now known) and all of the buildings which are now associated separately with those two properties formed a single unit which functioned as a Farm house with associated buildings

Mr Woolnough and Mr Scrimgeour have reported to me the results of the site inspection, in particular their views as to which buildings were pre 1948 structures, existing within the curtilage of the Lodge at the time of listing in 1966, and were ancillary to the Lodge as principal building at the date of listing.

I am advised that in the cases of buildings 1, 5, 6, 7, 9, 11 and 12, a combination of map and physical evidence shows the buildings to be pre 1948. The type of building- as shown below- indicates in each case that it clearly was a building ancillary to the principal building at the time of listing;

1. Former cart shed with granary above.
5. Former brick hackney stable.
6. Former brick carthorse stable
7. Former neathouse

contd

9. Former cart shed and lean to
11. Open sided former cart shed or similar structure
12. Remains of former animal storage building

I am advised that building 2 is a former stables and that the construction of the building and map evidence indicates that it is likely to be a replacement structure that post dates 1948.

Building 8 is in Mr Scrimgeour's view a post 1948 building replacing an earlier structure.

Building 10 is a steel framed Dutch barn for which map, photographic and physical evidence give a post 1948 date.

Accordingly, these 3 buildings do not meet the tests and cannot be regarded as curtilage listed buildings.

I am mindful that in not accepting that all of the numbered buildings are curtilage listed, I am differing from Mr Collins and Mr Harwood QC. I am grateful for Mr Collins' very thorough research. I have also been helped by Mr Harwood's opinion and I know that he is a respected planning silk. However, the determination of this issue is a matter for the local planning authority, subject to the usual public law remedies. I find Mr Scrimgeour's conclusions and recommendations to be sensible and compelling and I endorse them.

Conclusion/Decision

The Council's up to date and settled view is that buildings 1, 5, 6, 7, 9, 11 and 12 meet the tests and should therefore be treated as curtilage listed buildings but that the other buildings- 2, 8 and 10 do not. Since your clients' application would involve the erection of fences as enclosures around buildings, some of which are listed and all of which are within a listed curtilage, it must be refused because the permitted development rights given by Class A are not applicable in these circumstances.

Right of Appeal

The refusal of these applications may be challenged by appeal to the Secretary of State for Communities and Local Government as provided for by Section 195 of the Town and Country Planning Act 1990 as amended. Appeals should be submitted in writing to the Planning Inspectorate whose address is Customer Support Unit, Temple Quay House, 2, The Square, Temple Quay, Bristol BS1 6PN. (Tel. 0117 372 8000); website www.planning-inspectorate.gov.uk)

Yours faithfully

HILARY SLATER
Solicitor, Head of Legal and Democratic Services