

Officer's Report

Planning Application No: 144347 and 144977

144347 PROPOSAL: Application for a lawful development certificate for the installation of planters, benches.

144977 PROPOSAL: Application for a lawful development certificate for the installation of bike racks

LOCATION: Nettleham Library 1 East Street Nettleham Lincoln LN2 2SL

WARD: Nettleham

WARD MEMBERS: Cllr J Oliver, Cllr A White

APPLICANT NAME: Mr M Dodds

TARGET DECISION DATE: 29/04/2022

EXTENSION OF TIME: 11/8/2022

DEVELOPMENT TYPE: Certificates of Lawful Development

CASE OFFICER: Vicky Maplethorpe

RECOMMENDED DECISION: Grant certificates

These applications have been referred to the Planning Committee on the basis that the original applicant is Ward Member for Nettleham.

Description:

The application site comprises a village 'hub' which houses a library and cafe and provides a venue for local groups and activities. The building is within the village centre of Nettleham. The site is within the conservation area and Flood Zones 2 (medium probability) and 3 (high probability). To the north of the site is a small business centre, to the south west is a public house and the rest of the site is surrounded by residential dwellings.

There are two applications under consideration:

- 144347 is for a Certificate of Lawful Development for the existing wooden planters and 11 benches; and
- 144977 is for a Certificate of Lawful Development for 2 metal bike racks, proposed.

The application seeks certificates from the local planning authority in order to establish whether the above works would be lawful for planning purposes.

Relevant history:

WR/423/68 – Erection of library district headquarters and garage in respect of which outline planning permission was granted - CP

134505 - Planning application for change of use to A3 cafe while continuing to provide library services and office space - GC, 22/8/16

137428 - Request for confirmation of compliance with conditions 1,2,3 and 4 of planning permission 134505 granted 22 August 2016 – CD

139210 - Application for advertisement consent for 3no. non-illuminated wall mounted signs, GC, 21/5/19

143965 - Advertisement consent to display 1no. non-illuminated fascia sign, GC, 3/2/22.

145126 - Application for a lawful development certificate to provide a small takeaway element and the showing of occasional films, Undetermined.

Representations:

Planning Practice Guidance¹ on Lawful Development Certificates, sets out that *“There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.”*

Representations have been received from a local resident: 2 letters from 1 Cross Street, including minutes from a meeting held at The Hub:

‘Please see attached comments from myself and my wife. We have met with Hub on this and i have attached the minutes they issued which to date very few items have been dealt with with the exception of removing 1 bench and a light bulb along with a visit from a lady regarding the singing. As you will see the meeting was attended by the applicant along with all of the trustees.’

‘Far to much seating , no parking provided for visitors. Current trading hours are make no consideration to the local neighbours.’

Relevant Planning Legislation:

National guidance

The Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended).

Town and Country Planning Act 1990 Sections 191 and 192 as amended:

Section 191 Certificate of lawfulness of existing use or development

(1)If any person wishes to ascertain whether—

(a)any existing use of buildings or other land is lawful;

(b)any operations which have been carried out in, on, over or under land, are lawful, or

(c)any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an

application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purpose of this Act uses and operations are lawful at any time if-
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and;
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-
(a) the time for taking enforcement action in respect of the failure has then expired; and
(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Section 192 Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether—
(a) any proposed use of buildings or other land; or
(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Section 55 and 57 of the Town and country Planning Act:

Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in [section 55 of the Town and Country Planning Act 1990](#).

[Section 57 of the Town and Country Planning Act 1990](#) directs that all operations or work falling within the statutory definition of 'development' require planning permission.

The National Planning Policy Guidance

Lawful Development Certificates –

<https://www.gov.uk/guidance/lawful-development-certificates>

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section

192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it.

Main issues

- Are the works classed as operational development and do they require an application for planning permission?

Assessment:

A Certificate of Lawful Proposed Use or Development will clarify whether a proposed use or development is lawful for planning purposes (or otherwise requires the Local Planning Authority’s planning permission). These are not applications seeking planning permission from the Council. The planning merits raised by these applications are not for consideration. It is simply a technical assessment made using evidence, fact, and legal consideration of the permitted development rights.

Planning permission is only needed if the work being carried out meets the statutory definition of ‘development’ which is set out in [section 55 of the Town and Country Planning Act 1990](#).

To assess whether operational development has taken place the council must have regard to the tests of size, physical attachment and permanence to decide that as a matter of fact and degree the planters, benches and bike rack constitute development.

It should be noted that the existing benches and planters and proposed bike racks are sited within the existing curtilage of the planning unit and not on the public footpath and therefore it is considered that no change of use has taken place.

Existing Benches and Planters (144347):

There are 11 wooden picnic benches in total on the grassed and hardstanding areas surrounding ‘The Hub’. These are not physically attached or fixed to the ground.

Placing the freestanding, unfixed, non-permanent tables within the established curtilage of the business premises in association with the existing use does not amount to development and therefore planning permission is not required.

Turning to the planters, these are arranged in two groups along parts of the boundary of the site. The applicant confirmed the size of the planters as: single planter adjacent Cross Street measures 36x410x63cm and the 3 planters grouped together measure 34x131x62cm , 225x35x60cm, 231x60x37cm.

The Town and Country (General Permitted Development) (England) Order 2015 (As Amended) Schedule 2 Part 2 Minor Operations Class A allows for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

It is considered that the planters form a means of enclosure along parts of the boundary of the application site. Under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 the proposal would **not** be permitted if:

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed— (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; (ii) in any other case, 1 metre above ground level;

The planters are 63cm in height.

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

The planters are 63cm in height.

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

This is not applicable.

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

The Hub is not a listed building.

The existing planters therefore conform with Part 2, Class A of the GPDO in regards to the erection of a means of enclosure.

Proposed Bike Racks (144977):

With regards to the bike racks, which will measure 0.35 in height by 1.60 wide and 0.43m in depth and will be permanently fixed to the ground, it is considered that this element can be defined as '*de minimis*' in planning terms meaning that this operation is too minor to constitute development. A judgement of fact and degree has been carried out, having regard to scale, nature and effect, as to whether any operation or development has taken place, and as the works are so minimal and small it is concluded that the works do not warrant an application for planning permission.

Other matters:

A neighbour raises concerns with the proposed works stating *“Far to much seating , no parking provided for visitors. Current trading hours are make no consideration to the local neighbours.”*

However, this application considers only whether or not the proposed works would be lawful or not for planning purposes (without requiring planning permission).

Legislation and guidance is clear that *“Planning merits are not relevant at any stage in this particular application or appeal process”*² and that *“Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.”*³

Recommendation:

- It is considered that in respect to application **144347** for the placement of freestanding, unfixed, non-permanent tables they do not amount to development.
The proposed planters are permitted development as defined within the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2015 (GPDO) As Amended.
- Issue the certificate for application **144977**, proposed bike racks. In respect to the minor nature of the works as described for the bike racks it can be considered as ‘de minimis’ in planning terms and does not comprise development requiring an application for planning permission.

Human Rights Implications:

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant’s and/or objector’s right to respect for his private and family life, his home and his correspondence.

Legal Implications:

Although all planning decisions have the ability to be legally challenged it is considered there are no specific legal implications arising from this report.

² Paragraph: 009 Reference ID: 17c-009-20140306

³ Paragraph: 008 Reference ID: 17c-008-20140306