

---

<b>Borough Green</b> Borough Green And Long Mill	<b>560973 157332</b>	<b>Request for revocation of Lawful Development Certificate issued under ref. TM/08/01852/LDE</b>
--	----------------------	---

Proposal:	Revocation of Certificate of Lawful Development (Existing): Use as car parking area
Location:	Land Rear Of 19 - 29 Station Road Borough Green Sevenoaks Kent TN15 8ET
Applicant:	Mr Bengt Landgren

---

#### **1. Description:**

- 1.1 This is an unusual case where the Borough Council has been requested to revoke a lawful development certificate of existing use that was issued on 28 August 2008 in respect of land used for car parking. The site is located to the rear of a terrace of dwellings at 19-29 Station Road. The request to revoke the certificate is from the original applicant.
- 1.2 The reason for the request is that the applicant informed the Borough Council, after the certificate was issued, that information that was submitted by him in support of his application was inaccurate. This is because the area of land in question where car parking actually took place was not as large as the area specified in the application for the lawful development certificate.

#### **2. Reason for reporting to Committee:**

- 2.1 In order to accord with the Borough Council's Constitution which does not allow this matter to be delegated to an officer to determine.

#### **3. The Site:**

- 3.1 The site is located to the rear of a row of terraced dwellings at 19-29 Station Road. The site the subject of this application measures 25m in length and 7.4m wide.

#### **4. Planning History:**

TM/79/10935/OLD	planning application not required	26 January 1979
-----------------	--------------------------------------	-----------------

Single storey extensions.

TM/79/11550/FUL	grant with conditions	31 October 1979
-----------------	-----------------------	-----------------

Construction of car parking areas.

TM/08/01852/LDE Certifies

28 August 2008

Lawful Development Existing: Use as car parking area

**5. Determining Issues:**

- 5.1 The provisions for revoking a certificate of lawful development are contained within section 193 (7) of the Town and Country Planning Act 1990 (as amended). This states that a LPA may revoke a certificate if, on the application for the certificate:

*“(a) a statement was made or document used which was false in a material particular; or*

*(b) any material information was withheld.”*

- 5.2 Before considering whether the above provisions apply, it would be useful to set out some background to this case.
- 5.3 A valid application for a lawful development certificate was received by the Borough Council on the 3<sup>rd</sup> July 2008. The application was submitted by Mr Bengt Landgren who lives at an adjoining property in Station Road, Borough Green. The applicant did not, and did not need to, own the land within the application site. The land was owned by a Mr M Ruse.
- 5.4 The purpose of the application was to establish whether the use of land identified in the application for car parking was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended).
- 5.5 The applicant submitted that the land in question had been used for car parking for a period in excess of 10 years prior to the submission of his application. This assertion was supported by Photographs, a site plan and a Statutory Declaration that was witnessed by a Solicitor (D Fisher & Co, 40 High Street, Borough Green).
- 5.6 At the time that this application was submitted to the Borough Council, the requirements for administrating this type of application were prescribed within the Town and Country Planning (General Development Procedure) Order 1995 (GDPO). This has since been superseded by the Town and Country Planning (Development Management Procedure) Order 2010, which came into force on 1<sup>st</sup> October 2010.
- 5.7 The application was administrated and determined in accordance with the requirements of section 191 of the Town and Country Planning Act 1990 (as amended) and of those contained within Article 24 of the then Town and Country Planning (General Development Procedure) Order 1995. The application was

determined and a positive certificate issued on 28 August 2008 one effect of which is to confirm that the certified use may lawfully continue and is immune to enforcement action.

- 5.8 Following the grant of the lawful development certificate, a copy of a letter dated 8 September 2008 was received by the Council. The letter concerned had been sent by the landowner to the applicant. In this letter it is stated that information contained in the applicant's *statutory declaration* was materially false, as part of the land within the application site had been recently cleared and levelled. It was not, according to this letter, used for car parking since 1997 as had been stated by the applicant in his application.
- 5.9 On the 9<sup>th</sup> September 2008, a letter was received by TMBC from the applicant stating that there were "*inconsistencies*" in the information that he had supplied in his application for the Lawful Development Certificate, which related to the amount of land that had been used for car parking. In light of this he requested that the Lawful Development Certificate be revoked.
- 5.10 Guidance contained within Circular 10/97 (Annex 8) makes it clear that the onus of proof in an application for a lawful development certificate is firmly on the applicant. It also states:
- "the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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 own evidence is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability."*
- 5.11 The test for whether the existing development has occurred on "*the balance of probability*" is less onerous than that of "*beyond reasonable doubt*" that applies in matter of criminal law. Essentially this means that to be granted a certificate, the evidence must indicate that the development is more likely rather than less likely to have occurred.
- 5.12 In this particular case the applicant submitted a "*statutory declaration*" (which is a legal statement sworn before a lawyer) in which he stated that the land shown on the drawing submitted with his application had been used continuously for a period in excess of 10 years as car parking (the time period was 1997-2008). The Local Planning Authority had no evidence in its possession to cast doubt on the facts presented by the applicant. Aerial photographs of the application site from the relevant timeframe were studied as part of the consideration of this application which did not make the applicant's version of the events less than probable. Anecdotal information submitted by local residents in response to consultation on this application, by the Council, also corroborated the applicant's submission. It

was on this basis and taking into account the Government's advice contained within Circular 10/97 that the certificate of lawful development for this application was granted under my Director's delegated authority on 28 August 2008.

- 5.13 Correspondence has been exchanged between the Borough Council, the applicant and the landowner since August 2008 concerning this matter to ascertain the precise circumstances of this case. There was a period of time when there was no contact from the landowner. However the point has now been reached where the applicant has admitted that the plan submitted with his application was misleading and inaccurate in that it showed more land than had in fact been used for car parking for the period of time specified in his statutory declaration. The applicant has now explained that the northernmost boundary of the land that had been used for car parking in excess of 10 years was in line with the boundary between 25 and 27 Station Road, Borough Green. This differs from the area shown on the plan submitted as part of his application which showed the north boundary of the car parking area being level with the boundary of 17 and 19 Station Road (approximately 15 metres further north of the boundary between 25 and 27 Station Road).
- 5.14 It is therefore apparent by the applicant's own admission that the lawful development certificate was granted on the basis of documents that were 'false in a material particular'. Therefore, under section 193(7) of the Town and Country Planning Act 1990 (as amended), the certificate should be revoked.
- 5.15 It is an offence under section 194 of the 1990 Act to knowingly or recklessly make a statement which is false or misleading for the purposes of obtaining a Lawful Development Certificate. However, in the particular circumstances of this case, it is not considered that it would be in the public interest to commence criminal proceedings. The applicant notified the Council of the error in the information he supplied in support of his application within 2 weeks of the grant of the Certificate, and requested that the Certificate be revoked. It is therefore the view of the Chief Solicitor that the public interest would not be served by commencing proceedings under section 194.
- 5.16 Both the applicant and the landowner have confirmed in writing that they will not seek compensation from the Borough Council if the lawful development certificate is revoked. In this respect the Council is entitled to rely on information supplied to it with an application, particularly as part of that material was in the form of a "*statutory declaration*".
- 5.17 Before the certificate can be revoked, certain procedural matters need to be adhered to. Part 6, paragraph 35 of the Development Management Procedure Order 2010, requires that before a Local Planning Authority can revoke a Lawful Development Certificate:-

*"(1) the Council must give notice of that proposal to—  
(a) the owner of the land affected;*

- (b) the occupier of the land affected;*
- (c) any other person who will in their opinion be affected by the revocation*

*(2) the notice must allow those persons to make representations to the authority within 14 days of service of the notice and the Council cannot revoke the certificate until the period allowed for making representations has expired*

*(3) a written notice of any revocation must then be served on every person given notice under point (1)."*

- 5.18 In this instance, the owner of the land is well aware of the proposed revocation, as is the applicant, who would be affected by its revocation – nevertheless the Council must formally notify these two and every other relevant person of the intention to revoke before the formal revocation can proceed. The land is used for parking by others. Whilst it is not known at this time who exactly parks vehicles on this land as it lies immediately to rear of the dwellings at 19-29 Station Road, Borough Green, steps will need to be taken to notify the users/occupiers and the registered owners/keepers of any vehicles seen on the land within the application site to notify them all of the Council's intention to revoke the certificate of lawful development. A notice(s) will also be displayed on the land. This will possibly give rise to speculation about the future of the land and aspirations of the landowner. However, as Members will be aware considerations with regard Lawful Development Certificates are concerned solely with matters of fact and probability rather than any judgements about other matters such as acceptability as would be the position in the case of any redevelopment proposal.
- 5.19 Taking all of the above into consideration it is recommended that the certificate of lawful development that was issued under reference TM/08/01852/LDE be revoked, subject to appropriate notices being served.

## **6. Recommendation:**

### **6.1 Revoke Certificate of Lawful Development TM/08/01852/LDE, subject to:**

- 1 The Borough Council first complying with the requirements of Part 6, paragraph 35 of the Development Management Procedure Order 2010.

Contact: Matthew Broome