

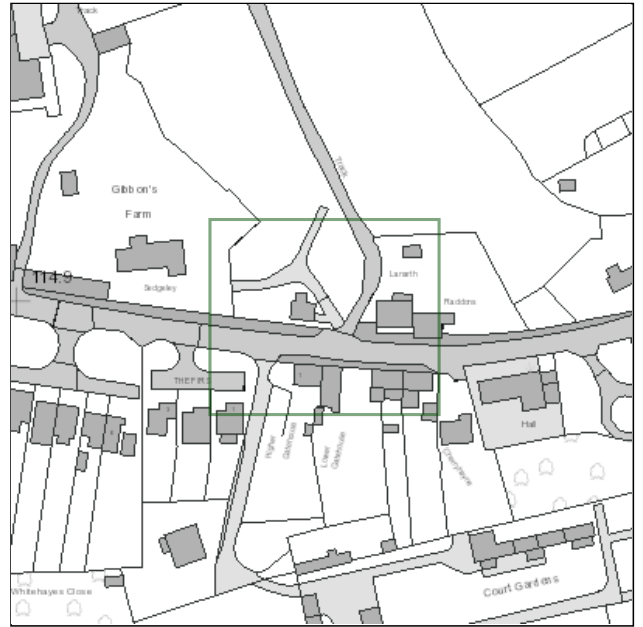
Ward Coly Valley

Reference 23/0459/CPE

Applicant Patricia Warrick

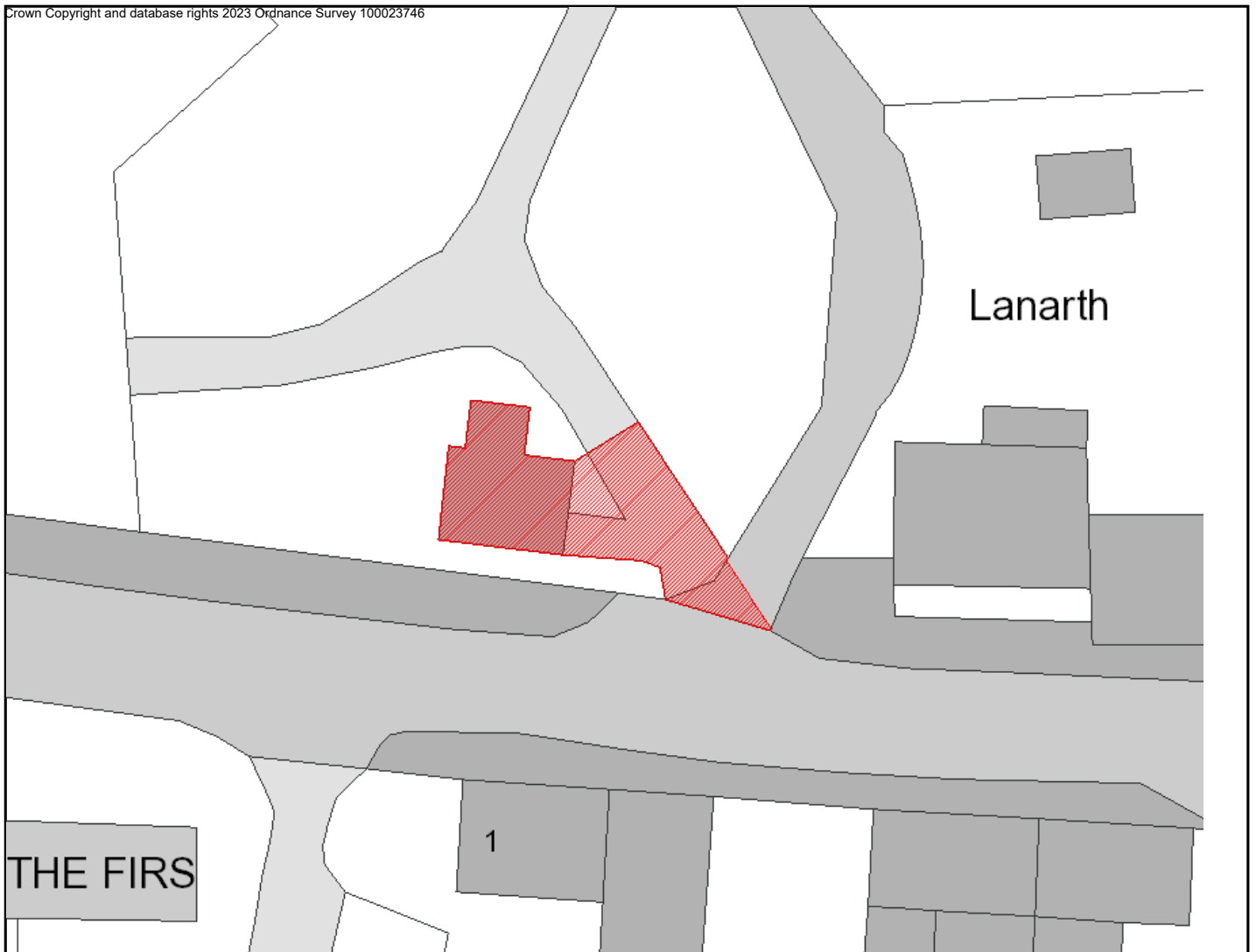
Location Gibbons Farm Wilmington Devon EX14 9JQ

Proposal Application for a lawful development certificate (CLUED) to establish the lawful use of existing vehicular access and adjacent building for domestic garaging and parking of cars



RECOMMENDATION: To grant a certificate of lawful use and development

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		Committee Date: 18.07.2023
Coly Valley (Widworthy)	23/0459/CPE	Target Date: 27.04.2023
Applicant:	Patricia Warrick	
Location:	Gibbons Farm Wilmington	
Proposal:	Application for a lawful development certificate (CLUED) to establish the lawful use of existing vehicular access and adjacent building for domestic garaging and parking of cars	

RECOMMENDATION: To grant a certificate of lawful use and development

EXECUTIVE SUMMARY

This application is before members as the applicant is related to an EDDC Councillor.

The application seeks the granting of a certificate to establish the lawful use of a barn as a domestic garage and creation of a vehicular access onto the A35.

The Planning Practice Guidance highlights that the onus of proof is firmly on the applicant and is therefore responsible for providing sufficient information to support an application. 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 evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

The aerial imagery available to both parties suggests that the barn was constructed between 1951 and 1961. Having also reviewed the Local Authority's GIS mapping, Google Earth & Streetview the access onto the A30 appears to have been constructed prior to 1999 where it has remained.

The submitted statutory declarations provide an insight into the timeline of the building. Mr Griffin, the former owner of Sedgley, purchased the barn with his brother in June 2004 before becoming the sole owner in 2012. Mr Avery, who resides at Raddons, states that it was around this time that an arrangement was made for him to store their car within the barn.

The statutory declaration from Mrs Patricia Warwick, who owns Marton Developments Ltd, states that this arrangement has continued since their

purchase of the site in 2014. Mr Avery also asserts within his own declaration that use of the building for garaging purposes has continued uninterrupted since 2012.

Having considered the submitted evidence and in the absence of any evidence to contradict or doubt the applicant's claims, the LPA cannot reasonably resist the issuing of the certificate. However, the submitted planning statement details that the application seeks lawful use of the building for domestic purposes despite the building being outside the residential curtilage of Sedgely, Raddons and Lanarth. Whilst Mr Avery has used the building for garaging purposes whilst residing at Raddons, the evidence suggests that the use of the building has been for garaging purposes only. The planning class use order makes a clear distinction between residential uses and those for storage purposes (B8), therefore, it is deemed appropriate in this instance for the LPA to exercise their right as per Section 191, (4) and omit the term 'domestic' from the final wording of the certificate.

As such, it is the position of the LPA that the application has only demonstrated that lawfulness for the purposes of garaging, the storage of cars and the formation and use of the access onto the A30. Notwithstanding this, the application is recommended for approval and a certificate should be issued in accordance with the wording provided at the end of this report.

CONSULTATIONS

None

Other Representations

None

Grounds Upon which the Certificate is Submitted

The site consists of a stone and timber clad barn with a corrugated sheet roof. The building is slightly set back from the A35 and largely screened by the stone and hedging that lines the southern boundary. The buildings location, appearance, form and materials suggest that it was at some point used for agricultural purposes, likely associated with Gibbons Farm.

The application seeks the granting of a certificate to establish the lawful use of a barn as a domestic garage and creation of a vehicular access onto the A35.

Analysis

Section 191 of the Town and Country Planning (T & CP) Act 1990 (as amended by the Planning and Compensation Act 1991) allows a person to apply to a Local Planning Authority (LPA) seeking a lawful development certificate to determine the lawfulness for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

The T & CP Act sets out that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force.

Section 171B of the T & CP Act sets out the time limits under which local planning authorities are able to take planning enforcement action:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The Planning Practice Guidance highlights that the onus of proof is firmly on the applicant where the applicant is responsible for providing sufficient information to support an application. Further, case law under *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630 held that 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 evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

Evidence Submitted by the Applicant

- Review of historical OS mapping within the Planning Statement.
- Review of Aerial Imagery and Google Earth & Street View.
- Statutory Declaration from Richard Griffin former owner of Sedgeley and Gibbons Farm.
- Statutory Declaration from Patricia Ann Warwick, Director of Marton Developments.
- Statutory Declaration from Patrick Avery, owner of Raddons and current user of the barn.

Evidence Available to the Local Planning Authority

- Aerial Imagery
- Historical OS maps
- Google Earth and Street View.

Review of the Evidence

The aerial imagery available to both parties suggests that the building was constructed between 1951 and 1961. It is also acknowledged that GIS mapping and Google Earth & Streetview show the access being in-situ prior to 1999 where it has remained.

The submitted statutory declarations provide an insight into the timeline of the building. Mr Griffin, the former owner of Sedgley, purchased the barn with his brother in June 2004 before becoming the sole owner in 2012. The submitted declarations indicate that Mr Avery, who resides at Raddons, state that it was around this time that an arrangement was made for him to store their car within the barn.

The statutory declaration from Mrs Patricia Warwick, who owns Marton Developments Ltd states that this arrangement has continued since their purchase of the site in 2014. Mr Avery also asserts within his own declaration that the use of the building for garaging purposes has continued uninterrupted since 2012.

CONCLUSION

Having considered the submitted evidence and in the absence of any evidence to contradict or doubt the applicant's claims, the LPA cannot reasonably resist the issuing of the certificate. However, the submitted planning statement details that the application seeks lawful use of the building for domestic purposes despite the building being outside the residential curtilage of Sedgley, Raddons and Lanarth. Whilst Mr Avery has used the building for garaging purposes whilst residing at Raddons, the evidence suggests that the use of the building has been for garaging purposes only. The planning class use order makes a clear distinction between residential uses and those for storage purposes (B8), therefore, it is deemed appropriate in this instance for the LPA to exercise their right as per Section 191, (4) and omit the term 'domestic' from the final wording of the certificate.

As such, it is the position of the LPA that the application has only demonstrated that lawfulness for the purposes of garaging, the storage of cars and the formation and use of the access onto the A30. Notwithstanding this, the application is recommended for approval and a certificate should be issued in accordance with the wording provided at the end of this report.

RECOMMENDATION

A certificate is to be granted confirming lawful use of the barn as a garage and the formation and use of the access onto the A30.

NOTE FOR APPLICANT

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email cil@eastdevon.gov.uk.

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Plans relating to this application:

Location Plan	02.03.23
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List of Background Papers

Application file, consultations and policy documents referred to in the report.