DELEGATED REPORT

Application Reference: PL/2023/08415

PROPOSAL

Certificate of lawfulness for use of the property as a dwellinghouse, not limited to a person employed or last employed in agriculture

SITE DESCRIPTION/CONTEXT

The application will consider the lawfulness for the use of the property as a dwellinghouse, not limited to a person employed or last employed in agriculture at 2 Fir Tree Villas, Lanhill, Chippenham. The application property is situated within the open countryside, to the north west of Chippenham.

PLANNING HISTORY

None

CONSULTATION

Chippenham Without Parish Council: No objection

REPRESENTATIONS

No representations

ASSESSMENT

Scope of consideration

This Certificate of Lawfulness application looks to confirm that the occupation of the dwellinghouse is not limited to a person employed or last employed in agriculture. When the property was granted consent in 1949, together with the neighbouring property, an agricultural occupancy condition was added which stated that:

"the building to which this permission relates to be used and/or occupied only be agricultural workers or their dependents as defined by Section 119 (1) of The Town and Country Planning Act 1947"

This application deals with the query whether the dwelling is now lawful as an unrestricted dwellinghouse, no longer tied by an agricultural occupancy condition. This application is assessed against the criteria set out in Section 191 of the TCPA 1990.

Section 191 of the TCPA 1990 allows an application to be made to establish the lawfulness of such a breach of planning control. Enforcement action in respect of all breaches of planning control is subject to time limits. In accordance with Section 171 B (3) of the Act, for a breach of condition to be considered legally acceptable, it must have occurred in excess of 10 years from the date of the breach, after which no enforcement action can be undertaken.

For a certificate of lawfulness to be issued the onus is on the applicant to provide evidence that, on the balance of probabilities, the breach of condition occurred not less than the time limit for immunity from enforcement action prescribed under Section 171 B (Time Limits) of the Town and Country Planning Act 1990 (as amended), whereby the time limit for taking enforcement action had expired.

Case and Evidence submitted

The application states that the dwelling was granted consent in 1949. The applicant moved into the property and has never been employed in agriculture. A statutory declaration has been submitted from the applicant which states the applicant has continuously occupied 2 Fir Free Villas from 1989 until the present day. Also submitted as evidence is P60's dating between 1985-1993, and 2002-2022; and payslips for 1994-2001, which confirms the applicant was employed in a non-agricultural occupation during this period. The statutory declaration states the applicant's only income was from this employer, aside from a 7 month period of equestrian related employment in 2017. The applicant's husband was not employed or last employed in agriculture.

There is no objection from Chippenham Without Parish Council and no disputes have been made to the application claims.

Conclusion

The application has produced evidence in the form of a statutory declaration, P60's and payslips. The evidence provided appears sufficiently precise and unambiguous to confirm that on the balance of probabilities the dwelling has been occupied in breach of condition far in excess of the 10 year period, and no enforcement action has taken place. No members of public have disputed the evidence and the parish council have no objection. On the balance of probability, it is

considered the breach of planning condition took place in excess of a 10 year period within the periods claimed as specified in Section 171 B (3), and therefore the condition is unenforceable

RECOMMENDATION:

The Certificate of Existing Lawful Use should be approved:

Location Plan Dated: 29-Sep-2023