DELEGATED REPORT

Application Reference: PL/2023/06925

PROPOSAL

Certificate of lawfulness for the continued existing use of bungalow

SITE DESCRIPTION/CONTEXT

The application will consider the lawfulness for the use of a bungalow at Kington Langley Garage, Malmesbury Road, Kington Langley, Chippenham.

The bungalow is situated on the western edge of Kington Langley, which is defined as a small village in the Wiltshire Core Strategy.

PLANNING HISTORY

- 18/09873/OUT - Redevelopment involving demolition of existing garage buildings, retention and refurbishment of existing bungalow and erection of 4 dwellings and associated works (access not reserved) - Refused
- N/99/00033/OUT - DEMOLITION OF EXISTING DWELLINGS/GARAGE AND UTILITIES AND DEVELOPMENT OF LAND FOR ELEVEN DWELLINGS – Refused
- N/97/02767/OUT - OUTLINE - RESIDENTIAL DEVELOPMENT FOR 11 NO DWELLINGS WITH DETAILS OF ACCESS RESIDENTIAL DEVELOPMENT – Refused
- N/87/00309/FUL – Extension to Workshop – Approved
- N/77/0921/F - Application for removal of condition no 4, garage repair workshop, on permission N/75/ 0364/F (Erection of garage repair workshop to replace existing workshop) – Approved
- N/75/0364/F - Erection of garage repair workshop to replace existing workshop - Approved

CONSULTATION

Kington Langley Parish Council: No comment received

REPRESENTATIONS

One representation received in support from a neighbour *"I moved to my present address in September 1987 and I can confirm that the property in question was fully constructed and it was inhabited by a family which resided there until March this year. I fully support the application as it would be good to see the property renovated and used as a family home again."*

ASSESSMENT

Scope of consideration

This Certificate of Lawfulness application looks to confirm that the existing use of the bungalow as a dwellinghouse, constitutes lawful development. This application deals with the query whether it is lawful as an independent use. 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 (2) of the Act, for building operations of the bungalow to be considered legally acceptable, it must have occurred in excess of 4 years from the date of the breach, after which no enforcement action can be undertaken. In accordance with Section 171 B (3) of the Act, for the change of use of land to residential curtilage 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 building operations and change of use 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 bungalow is believed to date back to 1938. The associated residential curtilage on the site plan is similar to what is shown on the construction plans. The bungalow has been lived in and occupied by the same family since it was purchased in 1964. The bungalow was extended within the 1970s.

Wiltshire Council's Council Tax department confirmed that the residential property has been listed and paying council tax for 30 years, since council tax was introduced 1st April 1993. An Offcer from Wiltshire Council Tax has confirmed Flat, Kington Langley Garage, Kington Langley, Chippenham, SN15 5PY is residential and have been paying Council Tax since 01/04/1993.

There is also Kington Langley Garage listed as a commercial property which has been paying business rates since 1990.

The applicant includes a “Statement of Truth” within the Planning Statement. This is signed but this is not a statutory declaration. This statement claims that the applicant purchased Kington Langley Garage (and bungalow) in 1964, and that the areas shown on the plan have been used for residential purposes since this time.

Google satellite images showed some areas of the initial Location Plan with some commercial car storage. This was raised with the agent and the Location Plan size has been reduced to exclude these areas and reduce the associated areas of residential curtilage to a smaller size.

No comments have been received from the Parish Council. One representation has been received by a neighbour to confirm the residence of the bungalow for residential use. No disputes have been made to the application claims.

Conclusion

The National Planning Policy Guidance states that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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. This is provided that the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. In this case, it is evidenced that the bungalow has been in residential use in excess of 4 years as demonstrated by council tax records. There was initially some concern about the extent of the residential curtilage initially proposed, due to the historic informal nature between the residential and commercial use at the site. However, since the Location Plan has been reduced, it is considered that on the balance of probability, this area of land has been used as residential curtilage in association with the bungalow for in excess of 10 years. No members of the public have disputed the claims, one has corroborated the claims. On the balance of probability, it is considered the building works for the bungalow took place in excess of a 4 year period within the periods claimed as specified in Section 171 B (2), and the change of use took place in excess of a 10 year period within the period claimed as specified in Section 171 B (3).

RECOMMENDATION:

The Certificate of Existing Lawful Use should be approved.

Approved plans for schedule 2:

Block and Site Location Plan, received by the LPA 27/03/24

Existing Elevations, received by the LPA 15/08/23