DELEGATED REPORT / CASE OFFICER'S ASSESSMENT

Ref No: ST/0169/19/CLP
Proposal: Application for a Lawful Development Certificate for the proposed use of the existing conservatory to locate a server computer for an existing established taxi business required for South Tyneside Council Taxi Licencing purposes.
Application seeking to confirm that the proposal will not require planning permission. (i.e. will not result in a material change in the use of the premises.)
Location: 31 Addison Road
West Boldon
NE36 0QY

Site Visit Made: 14/05/2019

Description of the site and of the proposals

This application is for a certificate of Lawfulness for a Proposed Use. The proposal consists of the use of a residential premises (specifically a conservatory to the rear of the dwelling house) for the installation of a computer to locate a server for an established taxi business, required for South Tyneside Council Taxi Licensing purposes at 31 Addison Road, West Boldon. This would involve the installation of one computer, use of a telephone line and broadband router in the conservatory. The computer would be linked to the main site for Dean Road taxis (an established taxi business) in Gateshead via the internet, through a virtual private network (VPN).

The application is for a Certificate of Proposed Lawful Development and as such it is for the Local Planning Authority to decide whether or not the use / operations described in the application constitutes a lawful use / operation of the land for the purposes of section 192 of the Town and Country Planning Act 1990 ('the Act').

Section 192(1) of the Act provides that any person may apply to the Local Planning Authority for a Certificate of lawfulness to establish whether;

a) Any proposed use of buildings or other land; or
b) Any operations proposed to be carried out in, on, or under land, would be lawful.

If, on an application under section 192(2) of the Act, the Local Planning Authority is provided with information satisfying it that in respect of the proposed 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.

The planning merits are not relevant to the consideration. Issuing a Certificate is based on factual evidence and it is the applicant's responsibility to provide sufficient information to support an application. A local planning authority is entitled to canvass evidence if it so wishes before determining an application.

Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Unlike planning applications, there is no statutory requirement for Councils to notify neighbours with regard to an application for a Lawful Development Certificate. Furthermore, Central Government Guidance (Planning Practice Guidance) on applications for lawful development certificates states 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."* This is because the Council is simply being asked through this Lawful Development process to clarify the land use and whether the proposal requires planning permission. The application is seeking to confirm that the proposals will not require planning permission; that it will not result in a material change in the use of the premises as a residential dwelling.

Central Government Guidance (Planning Practice Guidance) further states that "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."

Assessment

The application site is located within a residential area, at the junction of Addison Road and Mill View, West Boldon. The property is a two-storey semi-detached house, which has been extended, including the addition of a rear conservatory. The lawful use of the property is as a dwellinghouse, Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). A Case officer site visit and check with Council Tax has established the use of the property.

Proposed use

By way of background, the Town and Country Planning (Use Classes) Order 1987, explicitly excludes a taxi business or business for the hire of motor vehicles from any use class under Article 3(6)(f) of the Use Classes Order. The Use Classes Order and National Planning Practice Guidance does not make a distinction or recognize changing technologies associated with taxi businesses or businesses for the hire of motor vehicles. Use of a taxi business or business for the hire of motor vehicles is therefore *sui generis*.

However, in providing clarification through the assessment of the application, the applicant has confirmed that the use of the property would be for the installation of a server computer within the conservatory of 31 Addison Road, to provide an address within South Tyneside for an Operator's Licence. No taxi business would operate from the property. In respect of the licensing position, the Council's Licensing Team has advised that enquiries and calls would drop into the server and then be distributed to licensed cars and drivers. Licensing have confirmed that they have no objections provided Dean Taxi's use South Tyneside licensed cars and drivers. This would be controlled through the licensing regime rather than planning. Licensing have advised that there would be no need for drivers and cars to visit 31 Addison Road and no staff would be required at the property. The computer server would route calls and enquiries to the Gateshead taxi operating offices. This would enable drivers who are licensed (have vehicles plated) in South Tyneside to work in the Gateshead area.

The applicant has confirmed that 31 Addison Road would not be used for undertaking administrative tasks or provide central organizational support to drivers. The server computer would support the hire procedure for the existing taxi business (Dean Taxis), connecting through the server to an app based system, entirely independent of base support or radio communication. A 'taxi business' namely a control base (taking bookings and directing drivers to destinations) would not operate from the property. Taxi's would not congregate at the property awaiting hire and passengers awaiting a vehicle would not congregate or visit the premises for the purpose of booking a taxi. The property is only required to provide an address for an Operator's Licence. The computer server would be used online via a virtual private network (VPN) link to the main Gateshead site.

As stated above, the planning merits are not relevant to the consideration of the application, however it is considered that through the use of the computer server there should be no disturbance or inconvenience to neighbouring residential properties arising from the proposed operations. The installation of the

computer, phone line and broadband router is equipment that is also located within a residential dwelling.

It is accepted that the current lawful use of the property is a residential dwelling, a dwellinghouse as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended, and this application seeks to establish that the installation of the computer server would not result in a material change in the lawful use of the property. Taking the above factors into consideration, alongside the character of the intended use, it is considered that there would be no recognizable difference in the character and type of activities currently taking place at the property. From the evidence available, there would, as a matter of fact and degree, be no material change of use. Consequently the applicant has demonstrated that the proposed use would be lawful and a certificate can be issued.

It should be noted that in the event that the applicant does not operate in accordance with the details outlined within this application, namely the operation of a taxi business including drivers visiting and waiting outside the property, then consideration as to whether there has been a material change of use requiring planning permission would be required.

In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

Recommendation

Grant Permission No Conditions

List of approved plans for standard note

Plan Reference
Site location Plan received 27/02/2019
Additional Information Letter received 25/03/2019

Case officer: Helen Lynch
Signed:
Date: 16/05/2019

Authorised Signatory:
Date:

«END»