

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2018/0644/LAWE
Location: East Lodge Judge's Hill Northaw Potters Bar EN6 4NL
Proposal: Certificate of lawfulness for existing carport
Officer: Mr David Elmore

Recommendation: Refused

6/2018/0644/LAWE

Context	
Application Description	Certificate of Lawfulness for existing carport
Relevant Planning History	None relevant
<p>The main issues are:</p> <p>Whether the applicant can demonstrate, on the balance of probabilities, that the building has become lawful under the terms of Section 171B of the Town and Country Planning Act 1990 (as amended).</p>	
Discussion	
<p><u>The relevant period for immunity from enforcement</u> The existing carport is considered to be a building and therefore Section 171B(1) applies. Section 171B(1) states:</p> <p><i>“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.”</i></p> <p><u>Evidence submitted:</u></p> <ul style="list-style-type: none"> - Letter from director of company who constructed the subject carport, stating that the carport was built at the address in 2006 - Letter from gardener at East Lodge re-affirming the letter from the director of company who constructed the carport in 2006 <p><u>Appraisal of the evidence</u> The onus of proof in a lawful development certificate application is firmly on the applicant and the Courts have held that the relevant test of the evidence on such matters is “the balance of probability”. Moreover, the Court has held (see F.W. Gabbitas v SSE and Newham LBC [1985] J.P.L. 630) that the applicant's own evidence does not need to be corroborated by “independent” evidence in order to be accepted. If the local planning authority has no evidence itself, nor from any 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</p>	

Planning Practice Guidance reiterates that this is the approach to be taken by local planning authorities when determining certificate of lawfulness applications.

The applicant has submitted two letters to support this application. The first letter is from the director of the building company who constructed the carport, stating that it was built at the East Lodge in 2006. The second letter from the gardener at East Lodge re-affirms this statement. These letters however are not sworn oaths and therefore the Local Planning Authority cannot be satisfied that this evidence alone is sufficiently unambiguous to justify the grant of a certificate on the balance of probability.

Conclusion

The decision is based on the evidence available and the balance of probabilities. The evidence submitted is not sufficiently unambiguous to justify a grant of a certificate. A Certificate of Lawfulness is refused on this basis.

Reasons for Refusal:

1. The evidence submitted is not sufficiently unambiguous to prove on the balance of probabilities that the existing carport, located adjacent to the furthestmost south-east flank of East Lodge and contained within the red line boundary on drawing number: 35954 LP, has been in place for more than four years beginning on the date which the operations were substantially completed. Based on the evidence submitted and the balance of probabilities, this building is not eligible for a Certificate of Lawfulness.

REFUSED DRAWING NUMBERS

2.

Plan Number	Revision Number	Details	Received Date
35954 BP		Block Plan	7 March 2018
35954 LP		Location Plan	7 March 2018
35954 EX		Existing Elevations	7 March 2018

Determined By:

Mr Bright Owusu
22 May 2018