

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

DELEGATED APPLICATION

Application No: 6/2018/2504/LAWE
Location: East Lodge, Judge's Hill, Northaw, Potters Bar, EN6 4NL
Proposal: Certificate of lawfulness for existing carport
Officer: Mr David Elmore

Recommendation: Granted

6/2018/2504/LAWE

Context	
Application Description	Certificate of Lawfulness for existing carport
Relevant Planning History	Application Number: 6/2018/0644/LAWE Decision: Refused Decision Date: 22 May 2018 Proposal: Certificate of lawfulness for existing carport
<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"> - Statutory Declaration from Director of construction company (Ray McColgan) who constructed the carport outlining that he built the carport at East Lodge in 2006 - Statutory Declaration from landscape gardener of East Lodge (Francesco De Lellis) outlining that he saw the car port being built and completed at East Lodge in June 2006 - Supporting letter from Ray McColgan - Supporting letter from Francesco De Lellis confirming that he has been attending East Lodge on a weekly basis to carry out garden maintenance since 2003 and that the car port was constructed in 2006 by builder – Ray Mc Colgan, who he recommended to the applicant. 	

Appraisal of the evidence

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

The evidence submitted in this application, when considered together, is sufficiently precise and unambiguous to prove on the balance of probability that the subject carport has been in place for a period in excess of 4 years from the date of this application. Accordingly, a certificate of lawfulness is justified.

Conclusion

The applicant has proved, on the balance of probabilities, that the subject carport is lawful under Section 171B(1) of the Town and Country Planning Act 1990, as amended. A certificate of lawfulness is therefore granted.

DRAWING NUMBERS

The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
35954 BP		Existing Block Plan	17 October 2018
35954 LP		Location Plan	1 October 2018
35954 EX		Existing Elevations And Existing Plan View	1 October 2018

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

Determined By:

Mr Jonathan Murray
13 November 2018