

**Planning Committee 20 June 2017
Report of the Head of Planning and Development**

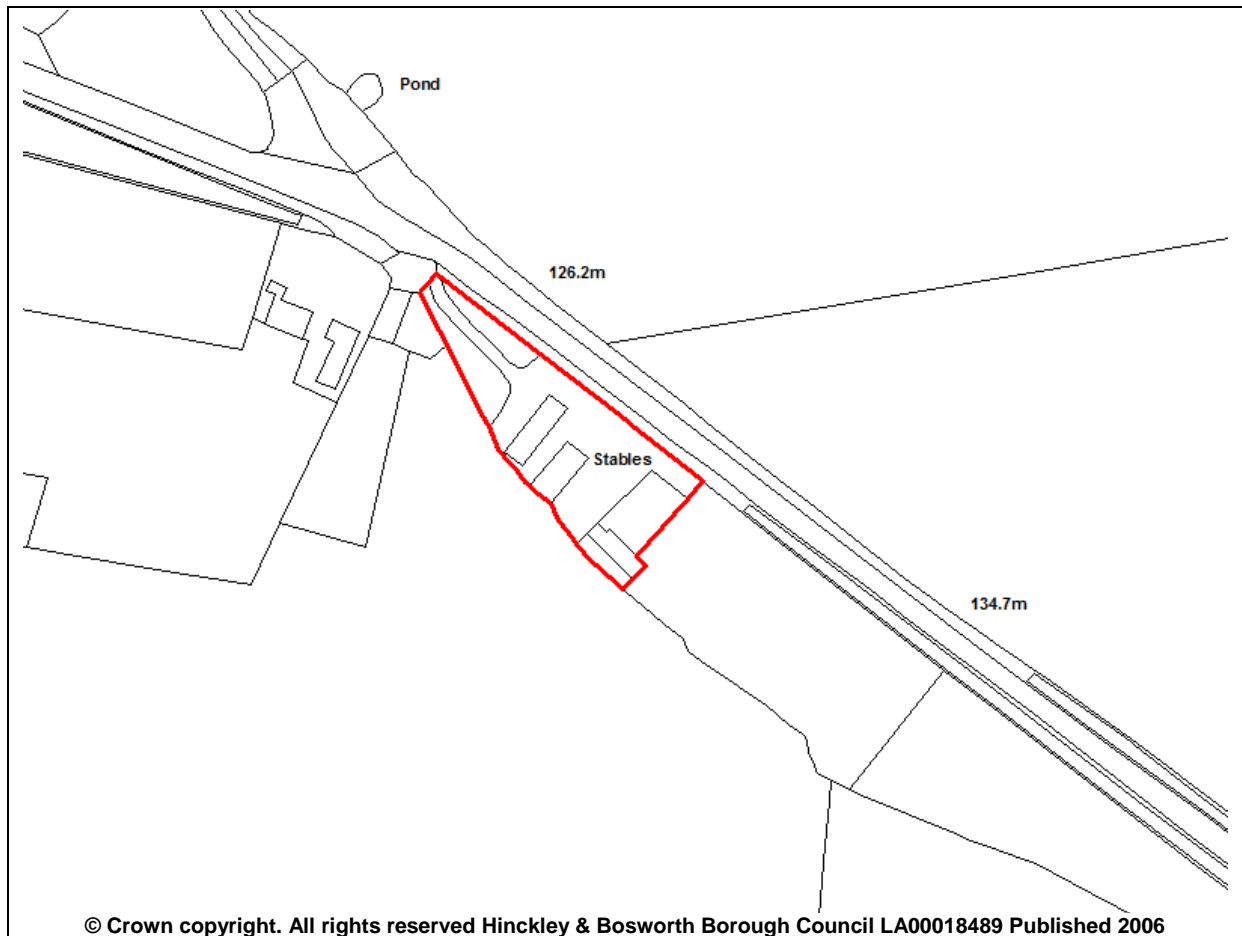


Hinckley & Bosworth
Borough Council

Planning Ref: 16/01019/CLUE
Applicant: Mr Paul Colman
Ward: Ratby Bagworth And Thornton

Site: Thornton Stables Reservoir Road Thornton

Proposal: Certificate of (existing) lawful development for the use of a mobile home/caravan as permanent living accommodation



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1. Recommendations

1.1. **Refuse Certificate of (existing) lawful development** for the use of a mobile home/caravan as permanent living accommodation for the reasons at the end of this report.

2. Application Description

2.1. This is an application for a certificate of lawful existing use for the use of a mobile home/caravan known as Thornton Stables as permanent living accommodation. The applicant claims that successive mobile homes/caravans on the site have been used continuously for residential occupation throughout the ten years back from the date of the application.

2.2. The following documents/information have been submitted to support the application:-

- Application Form
- Land Registry Title
- 2 x Site Plans
- 4 x Statutory Declarations by the applicant
- Council Tax Bills
- Utility Bills (electricity)
- Purchase invoice of latest mobile home/caravan
- 2 x supporting letter from applicants dated 2 April 2017 and 28 April 2017
- 12 x supporting letters from family and friends
- Supporting letter from agent for the application

3. Description of the Site and Surrounding Area

3.1. The application site is located in the countryside to the south east of Thornton and south west of Reservoir Road. The site comprises a hard surfaced access road leading to a row of four stables constructed of brick and corrugated metal roof sheets, a garage/storage building constructed of timber frames and corrugated metal sheets, a mobile home/caravan with an attached lean-to conservatory structure, two further storage buildings of timber frame and corrugated metal sheet construction, hardstanding and a garden area. There is also a large grassed paddock to the south east of the application site within the applicant's ownership. The site is surrounded by agricultural fields.

4. Relevant Planning History

No relevant planning history.

5. Publicity

5.1. No publicity has been undertaken as the application is for a certificate of lawful existing use.

6. Consultation

6.1. No consultations have been undertaken as the application is for a certificate of lawful existing use. However, letters of support have been received from Councillors Boothby and Crooks.

7. Policy

Town and Country Planning Act 1990 (Section 191) as amended by Section 10 of the Planning Compensation Act 1991.

Town and Country Planning (Development Management Procedure)(England) Order 2015.

Planning Practice Guidance

8. Appraisal

Key Issues

8.1. Whether the mobile home/caravan known as Thornton Stables has been continuously occupied for the residential purposes claimed during the relevant 10 year period for lawfulness to be established.

Legal Background

8.2. The committee needs to consider whether, on the facts of the application, the specific matter is lawful. It is not an application for planning permission and planning merits are not relevant at any stage in this particular application process.

- 8.3. The Town and Country Planning (Development Management Procedure)(England) Order 2015 and the Town and Country Planning Act (TCPA) 1990 (Section 191) as amended by Section 10 of the Planning Compensation Act 1991 provide advice and guidance in respect of applications for certificates of lawfulness of existing or proposed use or development.
- 8.4. Section 191 of the Town and Country Planning Act 1990 (as amended) provides that if a person wishes to ascertain whether:-
- a) any existing use of buildings or other land is lawful, then he/she can apply to the local planning authority for a certificate to that effect.
- 8.5. Uses are lawful at any time if no enforcement action may be taken by the Council, in the present case this means that the applicant has to show that the use claimed has been continuous for a period of ten years back from the date of the application i.e. 10 February 2017.
- 8.6. Planning Practice Guidance confirms that the burden of proof is on the applicant and the relevant test is the 'balance of probability'. The applicant's evidence in support of the application must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 8.7. In determining applications such as this, if the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 8.8. It is against this guidance that the application is assessed.

Assessment of the Evidence

- 8.9. The Land Registry Title (LT98874) and Statutory Declaration (PMC1) names Paul Mark Colman and Alexandra Mary Colman as registered proprietors of the application site from 18 July 2003.
- 8.10. Mr Colman in paragraph 6 of his Statutory Declaration (PMC2) states that he moved into the mobile home/caravan referred to approximately two weeks after purchasing the property (July 2003), and has been living at the application premises as his residence ever since, along with maintaining the domestic curtilage. The declaration also states that the mobile home/caravan on the site has been upgraded during that period. It states that the current mobile home/caravan is the third, and the purchase invoice submitted confirms that it was purchased on 14 April 2014 with a delivery date to be confirmed, and the previous mobile home/caravan was to be removed.
- 8.11. An aerial photograph of the site in 2006 appears to show the stables and storage buildings on the site but no evidence of a mobile home/caravan. An aerial photograph of the site in 2011 appears to show an additional structure on site in roughly the same position as the current mobile home/caravan and roughly the same size. An aerial photograph in 2014 appears to show an additional structure on site in roughly the same position as the current mobile home/caravan and roughly the same size. In their letter dated 28 April 2017 Mr & Mrs Colman explain that the aerial photograph taken in 2006 would be the time when Mr Colman was waiting for delivery of a replacement mobile home, the previous one having already been taken off the site. The letter states that Mr Colman lived in a touring caravan on site (located underneath the trees) until the new one was delivered. No evidence of that delivery has been submitted.

- 8.12. Statutory Declaration (PMC3) provides details of Mr Colman's Goods Vehicle Operator's Licence which refers to Thornton Stables as the 'new operating centre' for two vehicles by a variation dated 15 June 2005. However, the document refers to both 8 Oaks Drive and Thornton Stables as contact addresses for Mr Colman. In their letter dated 28 April 2017 Mr & Mrs Colman explain this is due to Mrs Colman being named as his Transport Manager on his Vehicle Operator License. This does not provide any conclusive evidence of residential occupation. The applicant has not made any claim that he needed to live on site in the mobile home/caravan for the purposes of that business.
- 8.13. Statutory Declaration (PMC4) provides a number of utility bills relating to the ongoing electricity supply at Thornton Stables. The bills are addressed initially during the period of Mr and Mrs Colman's ownership to 8 Oaks Drive, Newbold Verdon (albeit for the supply at Thornton Stables) up to 24 August 2007 and thereafter to Thornton Stables itself from 21 November 2007. However, a letter submitted by Mrs Colman dated 2 April 2017 states that the billing address was changed to Thornton Stables from 8 Oaks Drive in 2007 as the applicant's thought they had sold the house but the sale fell through, and the billing address was not changed back at that time. The utility bills also indicate that the usage of electricity supply at Thornton Stables was extremely low until the beginning of 2014 when it increased significantly. In their letter dated 28 April 2017 Mr & Mrs Colman explain that Mr Colman worked long hours and used electricity only for lighting as hot water, heating and cooking was all done with gas and that once Mrs Colman moved in permanently with all the usual electrical appliances and only working part-time, the electricity usage increased. No evidence of the purchase of gas bottles or mains gas supply has been submitted.
- 8.14. Council Tax bills for Thornton Stables submitted to support the application do not commence until 10 December 2013, when Mr Colman became registered for liability for Council Tax there. There is no evidence of Mr Colman's liability for Council Tax due to occupation prior to this date at Thornton Stables. Mr & Mrs Colman were registered for Council Tax at 8 Oaks Drive, Newbold Verdon from 1983 and paid continuously thereafter until the sale of the property in December 2013. In their letter dated 28 April 2017 Mr & Mrs Colman explain that Mr Colman saw no need to pay Council Tax at Thornton Stables as he disposed of any rubbish or recycling himself.
- 8.15. Mr and Mrs Colman are registered at 8 Oaks Drive, Newbold Verdon on the Electoral Register as recently as 16 October 2012. The Electoral Register has no voters registered at Thornton Stables until the 'property' was created on the system in April 2014. In their letter dated 28 April 2017 Mr & Mrs Colman explain that Mr Colman does not usually vote and was not interested in changing where he could vote from.
- 8.16. The supporting information submitted by others is in large part from immediate family members and friends and is in the form of letters as opposed to statutory declarations which would carry more weight evidentially. In addition, many of the letters do not actually address the issue of the occupation of the mobile home/caravan at all or provide any significant evidence as to its continuous occupation over the previous ten year period.
- 8.17. Notwithstanding Mr Colman's declaration in paragraph 6 of his Statutory Declaration (PMC2), that he moved permanently on site in July 2003, there is evidence from Council Tax records, the Electoral Register, aerial photography and utility bills/electricity usage which in officer's opinion make the applicant's version of events less than probable and which seem to suggest that continuous occupation of the site did not commence until around 10 December 2013, when 8 Oaks Drive,

Newbold Verdon was sold, Mr & Mrs Colman registered for Council Tax at the site, and thereafter electricity usage increased significantly. The supporting letter submitted by the applicants dated 2 April 2017 states that Mrs Colman and her daughter resided primarily at 8 Oaks Drive, Newbold Verdon until the house was sold in December 2013 and Mrs Colman then moved to live permanently at Thornton Stables. Not long afterwards (April 2014) the mobile home/caravan was upgraded.

- 8.18. Officers have taken legal advice on whether, based on the same information as is listed in this report, officers' conclusion are robust and that a certificate should not be granted.
- 8.19. Based on the evidence available the advice given is that the applicant's version of events is less than probable and that a certificate should not be granted. The evidence submitted to support the application in this case is arguably not 'sufficiently precise or unambiguous' to justify the grant of a certificate, not least by reason of the fact that much of the evidence in support does not actually address the issue of the mobile home itself. In addition, the local planning authority has evidence itself which contradicts the applicant's contentions.

9. Equality Implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 9.3. There are no known equality implications arising directly from this development.

10. Conclusion

- 10.1. Planning Practice Guidance confirms that the applicant is responsible for providing sufficient information to support the application and that such evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 10.2. In applications such as this, if the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 10.3. In this case, it is considered that the information which the Council has, namely Council Tax records, Electoral Registration records, aerial photographs, electricity usage, sale of 8 Oaks Drive, Newbold Verdon and upgrading of the mobile home/caravan provide evidence to suggest that, on the balance of probability, continuous occupation of the mobile home/caravan has not occurred for a period in excess of 10 years to justify the grant of a Certificate of Lawful Existing Use of the

mobile home/caravan as permanent living accommodation. It is therefore recommended that the application is refused for these reasons.

11. Recommendation

11.1. **Refuse Certificate of (existing) lawful development** for the use of a mobile home/caravan as permanent living accommodation for the reasons at the end of this report.

11.2. **Reasons**

1. The applicant has failed to submit sufficiently precise and unambiguous evidence/information to demonstrate that on the balance of probability a mobile home/caravan known as Thornton Stables has been occupied continuously as living accommodation throughout the period of ten years prior to the submission of the application on 10 February 2017 to justify the grant of a certificate of lawful existing residential use.