

CLEY-NEXT-THE-SEA – CL/24/0447- Certificate of Lawfulness for existing operation - addition of render on external walls of building at Land at Cooks Marsh, Cley-Next-The-Sea, NR25 7UA

Target Date: 29 April 2024

Extension of time: TBC

Case Officer: Darryl Watson

RELEVANT SITE CONSTRAINTS

Norfolk Coast National landscape (formerly AONB)

Cley Conservation Area

Glaven Valley Conservation Area

RELEVANT PLANNING HISTORY

PF/23/0001: Change of use of the land from agriculture to land associated with Class C1 (Guesthouse) to include the formation of parking and turning areas, 3 door openings in west elevation, 2 window openings in east elevation and rendering of walls - refused

PF/21/2188: External works including insertion of windows, external doors and vertical boarding to external walls to building with permission for use within Class C1 (guesthouse) – withdrawn.

CL/20/1881: Lawful Development Certificate for an existing operation - replacement of roof material on agricultural building – Lawful

PND/USE/20/0001: Notification under Class R of Schedule 2, Part 3 of the GPDO, proposed change of use of agricultural building to a flexible commercial use within Class C1 (hotels) of the Schedule to the Use Classes Order. The notification letter states: *"the building will be used for hotel purposes from 1 August 2020. The nature of the use is to provide 3 letting rooms and communal area for meals. The works will be mainly internal, but external works will be applied for separately if needed. The building subject to the change of use totals 145 m²".*

THE APPLICATION

This is for a lawful development certificate to confirm that operational development (in this case the application of render to the walls of the building) that has been carried out is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990.

In summary, 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 because for example, it is excluded from the definition of development in the Town and Country Planning Act or if permission is granted for it by the Town and Country Planning (General Permitted Development) (England) Order 2015.

REASONS FOR REFERRAL TO COMMITTEE:

The Director for Place and Climate Change considers a committee decision is required.

REPRESENTATIONS:

There is no statutory requirement to consult third parties including parish councils or neighbours. Whilst no publicity was carried out for this reason, comments have been submitted as below.

Cley Parish Council comment that:

- The building was unobtrusive, it carried little visual presence in the landscape and its functional form grounded it in its agricultural context.
- The roof has already been changed to profiled steel which for which a lawful development certificate was granted, which the parish disputed was not lawful development.
- The planning officer wrote in the decision letter on a prior application (PF/23/0001) that rendering of the external walls would formalise, animate and suburbanise the building so that it would have a much greater presence in the landscape.
- The current application is retrospective so the harm caused by the render can be easily seen. The building no longer preserves or enhances the character and quality of the area. The rendering has had a negative impact on the AONB, the local landscape character and the undeveloped coast, and the heritage asset which is the Glaven Valley Conservation Area.
- The render has caused a material, significant change in the external appearance of the building. It is considered that the rendered building does not conform with Core Strategy policies EN 1, EN 2, EN 3, EN 4, and EN 8 and, paragraphs 182,184, and 207 of the NPPF.

Cllr Holliday has submitted similar comments to those of the Parish Council

One from a resident of Cley raising the following:

- The building is a simple agricultural barn with block walls with no practical reason to render them.
- The building is located in a flood meadow and AONB.
- The application history of this property is to attempt to gentrify, suburbanise and transform it from a rural barn to an inappropriate tourist development.
- The developer has again proceeded with unsanctioned work and is applying for retrospective permission. The character of the building has already been damaged, so that formalising this cannot be justified.

CONSULTATIONS:

None.

HUMAN RIGHTS IMPLICATIONS

It is considered that the proposed development may raise issues relevant to

Article 8: The Right to respect for private and family life.

Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, approval of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

CRIME AND DISORDER ACT 1998 - SECTION 17

The application raises no significant crime and disorder issues.

LOCAL FINANCE CONSIDERATIONS

Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are not considered to be material to this case.

RELEVANT POLICIES:

A local planning authority can only 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 process.

OFFICER ASSESSMENT

Site description

The application relates to a small modern agricultural building on a small holding off the west side of Holt Road between the main part of the village and Newgate/Cley Green in an area known as Cooks Marsh. The building sits approximately 100 metres back from the road accessed via an unmade private track which also provides access to other agricultural buildings immediately to the west. The A149 Coast Road is approximately 250 metres to the north, Leatherpool Lane the closest public road to the west is 273 metres away and to the south Bridgefoot Lane is over 800 metres away. There are no public rights of way running close to the site.

The building is constructed with blockwork walls and originally had a fibre cement sheet roof covering which was replaced mid-2020 with an alternative profiled metal sheet covering, with roof lights installed in the western roof slope as were existing. This was confirmed as being lawful under application ref CL/20/1881 on the basis that the operations did not materially affect the external appearance of the building and therefore did not constitute development requiring planning permission as defined under s55 of the Town and Country Planning Act 1990 (TCPA)

Consideration:

Previously the concrete block used on the walls of the building were left exposed and in their natural colour which would have weathered over time. Photos on the 2021 and 2023 planning files show the blocks were of a typical size, laid in stretcher bond with mortar joints between.

The blocks were a cream/buff colour with a rough surface finish, with some on the east elevation a slightly different colour which appeared to be newer and used where openings had been blocked. At that time the northern gable was covered with oriented strand boards with a small single door opening.

The render that has been applied is a cream/buff colour and has a slightly rough texture. Its application is considered to constitute a *'building operation'* in terms of the definition of development at s55(1) of the Town and Country Planning Act 1990. Excluded from the definition of "development" at s55 of the TCPA however, are certain operations and uses including (s55(2)(a)(ii)), the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.

In deciding whether works materially affect the external appearance, a measure of subjective judgement is involved. The Courts (*Burroughs Day v Bristol CC [1996] 1 PLR 78; 1 EGLR 167*) have established that such judgment will involve consideration of the nature of the building, the nature of the alterations, and the change to the external appearance of the building as a whole, and the changes must be visible from a number of vantage points.

Views of the building northwards from Holt Road are restricted by landscape features i.e. trees and hedges. Whilst there is a small gap at a field access opposite Lime Kiln Close, hedges obscure the view from Holt Road itself. Similarly the building cannot be seen from Leatherpool Lane because of intervening landscape features. There are distant views of the building southwards from a short section of the A149 to the west of Cley and, the Norfolk Coast Path near the Cley sluices which is elevated above the road level, but it is mainly the roof that is visible.

There are closer views across from Holt Road in the section between its junction with the access track and opposite Town Yard. The building is only readily visible in these views and directly westwards along the track, but not in its entirety – only the east elevation (part of which is obscured by landscape features) and the north gable end.

The colour of the render that has been applied to the external walls is considered to be only subtly different to that of the exposed blockwork. Whilst it has a smoother texture and no horizontal and vertical joint lines, this difference is only readily apparent in closer up views of the building from within the access itself and land immediately around the building. As it is private land these are not from public vantage points.

Consequently, as a matter of fact and degree, it is considered that the application of the render has not materially affected the external appearance of the building as a whole. Thus, the operation falls within the exclusion at s55(2)(a)(ii) and hence does not constitute "development". The operation that has been carried out therefore is considered to be lawful.

Whilst comments relating to the fact that the development does not comply with a number of policies in the Core Strategy and NPPF have been received, these are not considerations in this case nor is the building's location.

Moreover, none of the windows proposed at the rear would be readily visible from public vantage points.

Conclusion

The development is considered to be lawful for the reasons stated.

RECOMMENDATION:

APPROVAL – issue certificate confirming the operations carried out are lawful