

## **Agenda Item No 7A**

### **Planning and Development Board**

**13 June 2016**

**Report of the  
Head of Development Control**

**Certificate of Lawfulness  
Application for existing use as a  
dwelling for Mr and Mrs Nicholas  
Horton  
Lake House Bakehouse Lane  
Nether Whitacre B46 2EB**

#### **1 Summary**

- 1.1 Members will recall that the Board considered this application in October last year. It resolved not to grant the Certificate sought after considering all of the evidence submitted by the applicant and that submitted in rebuttal. The reason for this refusal was that the applicant had not on the balance of probability, provided sufficient evidence to verify his claim of continuous use of the application building for a period of four years prior to the submission of the application.
- 1.2 The applicant has lodged an appeal against this refusal and this is to be heard by way of a Public Inquiry.

#### **Recommendation to the Board**

**That in light of the receipt of legal advice, the Council pursues the ten year rule to the forthcoming appeal as its primary approach, but that it still continues with the alternative four year rule as an alternative.**

#### **3 Report**

- 3.1 The determination of this application was dealt with using the “four year” rule – eg. that a change of use of the building to a residential use has been continuous over the previous four years.
- 3.2 The submission of the appeal has led to the Council engaging Counsel to deal with its case.
- 3.3 Following a case conference the Council has received legal advice that it is worth suggesting that the determination of the case should have been dealt under the “ten year” rule. This is because there is some evidence that points to the application building being a new building and not the same building as

that approved in 1998 as a “shelter”. As a consequence there could be no change of use of the 1998 building. As such the ten year rule applies. As this new building was substantially completed in 2009, the ten years cannot apply.

- 3.3 In light of the receipt of this legal advice, the Board is recommended to adopt this ten year approach in the forthcoming appeal. In case the Inspector does not agree, the Council will continue to pursue its original four year rule approach.

The Contact Officer for this report is Jeff Brown (719310).

### **Background Papers**

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date