

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE : 24 OCTOBER 2000

**00/0604/LD: CERTIFICATE OF LAWFULNESS OF EXISTING USE OF PREMISES
FOR
LIGHT INDUSTRIAL USE AT GLENAMMER COTTAGE, DALRYMPLE**

APPLICATION BY GLENAMMER ENGINEERING LIMITED

Report by Director of Development Services

1 PURPOSE OF REPORT

- 1.1** The purpose of this report is to present for determination an application for a Certificate of Lawfulness of Existing Use. The application is submitted to the Development Services Committee for consideration as there is no provision for such applications to be considered by the Local Planning Committee under the Scheme of Delegations.

2 BACKGROUND

- 2.1** An application for a Certificate of Lawfulness of Existing Use is a procedure to establish the planning status of a use which has been continuing for a number of years without specific planning approval. Any person may make an application to the planning authority to ascertain whether the existing use of a building is lawful. For the purposes of the Act, uses are lawful if (1) no enforcement action may be taken either because the use did not require planning permission or because the time for enforcement has expired, and (2) the use is not in contravention of an enforcement notice already in force. For a change of use such as that claimed by the applicant, the time limit set by the Act for enforcement action is 10 years from the date of commencement of the use.
- 2.2** In determining an application the Planning Authority must address the facts of the case, not the planning merits of the development. The onus is on the applicant to provide sufficient information of the lawfulness to satisfy the planning authority. The applicant, however, does not require to prove the lawfulness beyond reasonable doubt. The only information of relevance to the decision is information on whether the use has continued for a period of more than 10 years. In assessing this information the Planning Authority is required to consider whether, on the balance of probability the use can be said to be lawful for at least 10 years. Evidence which contradicts claims by the applicant may be taken into account in judging the balance of probability.

- 2.3** If the balance of probability indicates that the use has continued for at least 10 years the Authority is required under the Act to grant a Certificate. Conversely, if sufficient evidence has not been provided by the applicant grant of a Certificate would be contrary to the Act. Under these circumstances the Authority would in effect be failing in its duty to consider taking enforcement action on an unauthorised use.
- 2.4** The applicant has a right to appeal. Furthermore, if a Certificate of Lawfulness of Existing Use is not granted a new application can be made if additional information becomes available.
- 2.5** If a Certificate of Lawfulness of Existing Use is refused it is also open to a property owner to submit a retrospective application for Change of Use. Under these circumstances, if a Change of Use is approved, it is open for the Authority to impose conditions. A Certificate of Lawfulness of Existing Use on the other hand cannot be used to control development through conditions.
- 2.6** In this instance Glenammer Engineering submitted an application for a Change of Use and extension to the premises prior to submitting their application for a Certificate of Lawfulness of Existing Use. A report on the application for Change of Use and extension the premises has been considered by the Southern Area Local Planning Committee. This is, however, not relevant to consideration of the application for a Certificate of Lawfulness of Existing Use. If a Certificate of Lawfulness of Existing Use is granted planning consent a Change of Use would not be required, but the extension proposed would still require consent.

3 APPLICATION DETAILS

- 3.1 Site Description:** The application site is located within the curtilage of a residential property known as Glenammer Cottage. The site is adjacent to the B7036 public road and it is adjacent to the Primpton Burn and Glenammer Bridge. The site is bounded by agricultural land, and it is 0.177 hectares in area. The application relates to the existing workshop premises lying to the west of the cottage.
- 3.2 Development Considered to be Lawful:** The applicant seeks to establish the use of the existing workshop premises for light industrial use under category (c) of Class 4 (Business Use) of the Town and Country Planning (Use Classes) (Scotland) Order 1997.

4 EVIDENCE OF USE

- 4.1** The applicant states that the last use of the premises was for furniture stripping and refurbishment and a furniture manufacturing business conducted by the previous owner of the property. This use is stated to have been carried out since 1989. The applicant also states that as the present owner he has used the

premises for the manufacture and assembly of laboratory sieves since May 1998. In summary the applicant is claiming that the premises have been used for light industrial use for a period in excess of 11 years.

- 4.2** No specific evidence, for example financial accounts or invoices from the previous business, has been provided by the applicant to substantiate the claim that the premises have been used for light industrial use for over 10 years.
- 4.3** A letter has, however, been received by the Sub Postmaster in Dalrymple who confirms that from 1989 a furniture restoration business was operated from Glenammer Cottage until the present owner, the applicant, purchased the property.
- 4.4** East Ayrshire Business Partnership has confirmed that an award of grant was made to a furniture restoration business at Glenammer Cottage which was taken up in May 1992. This was a start-up grant for a new business.
- 4.5** A letter of representation has been received from a neighbouring property owner stating that he has never been aware of any form of light industrial activity. His understanding was that a certain amount of joinery and wood working activity at the cottage was undertaken essentially as a hobby, not as a commercial enterprise.
- 4.6** Planning permission for the erection of a double garage was granted in December 1986. Use of the premises for light industrial purposes would have represented a contravention of this permission. A search of the planning registers revealed that no planning permission has been granted for the use of the premises for light industrial purposes, nor has any enforcement notice been served in respect of any unauthorised use of the premises.

5 CONCLUSIONS

- 5.1** In applications for Certificates of Lawful Use the onus of proof is firmly on the applicant (in contrast to applications for planning permission where there is a presumption that development should be approved unless there are material reasons why it should not). In coming to a conclusion based on the evidence available the Planning Authority must weigh up the balance of probability as to whether the applicant's claim is correct.
- 5.2** A business grant was awarded to a previous light industrial operation over 8½ years ago which helps to corroborate the statement provided by the Sub Postmaster in Dalrymple. But the grant was for a new business. Although there is no precise information to the contrary there is equally no conclusive evidence that the premises were being used for light industrial operations 10 years ago.

6 FINANCIAL AND LEGAL IMPLICATIONS

- 6.1** The legal basis for consideration of an application for a Certificate of Lawfulness of Existing Use is set out in Section 2 above.

7 RECOMMENDATION

- 7.1** It is recommended that the Committee refuse the application for a Certificate of Lawfulness of Existing Use within the terms described under Class 4 (Business Use) in the Town & Country Planning (Use Classes) (Scotland) Order 1997.

Stephen Chorley
Director of Development Services
20 October 2000

SC/JR

BACKGROUND PAPERS

- 1 Application form and plans
- 2 Supporting documents
- 3 Letter of Representation
- 4 Planning application CD/86/254
- 5 Planning application 00/0339/FL

Any persons wishing to inspect the background papers listed above, should contact Hugh Melvin on 01563 555481.

Implementation Officer: Alan Neish

AGENDA