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Mr G Raisbeck
42 New Lane
Moorside
Cleckheaton

Date: 16/10/2024

Sent by email : graemeraisbeck@btinternet.com

Dear Mr Raisbeck

**RE: CERTIFICATE OF LAWFULNESS FOR PROPOSED CHANGE OF USE TO
CHILDRENS HOME, 48 NEW LANE, CLECKHEATON, BD19 6LG – PLANNING
REFERENCE - 2024/91435**

I refer to the above matter and all previous correspondence relating to the same.

As officer responsible for responding to complaints made against the Planning Service I have been forwarded your correspondence between the case officer for the above application, Chris Cockroft and yourself. I have also read information held on the planning file including your initial objections to the application, officer reports and information provided by the applicant. As I understand your concerns, you initially raised comments on the application for the proposed change of use of the property including amongst other matters, concerns relating to covenants attached to property deeds. Since the decision to issue a lawful development certificate, I can see from your emails you have continued with your concerns over covenants attached to property deeds and you feel the Local Planning Authority should have taken these into account during the decision-making process. In your email of 25 September 2024 you also allege the applicant had falsely claimed ownership on their application form. I also understand that you have, or intend to, pursue your own legal proceedings outside of the planning process although from your email correspondence you feel the Local Planning Authority are in some way complicit in the matter relating to an alleged breach of covenant. If I have not captured all your concerns, please feel free to provide further information.

Having read through the correspondence it appears that your primary concern is with the covenant attached to property deeds in so far as you claim the Local Planning Authority should not have granted the certificate while these concerns remained unresolved or unanswered. To this end you have requested the certificate be withdrawn.

On this point I can see the case officer, Chris Cockroft, in his email of 23 July 2024 clarified that the covenant was not a planning matter given the absence of any legal agreement made pursuant to the Planning Act and that private covenants would not be a matter the Local Planning Authority could consider. Further to Mr Cockroft's comments and perhaps to help clarify this matter, I would also refer you to paragraph 008 of National Planning Policy

Guidance (Lawful Development Certificates),(<https://www.gov.uk/guidance/lawful-development-certificates>) where it states:-

“Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.”

In practice this means private covenants, such as the one you are concerned over, carry no weight in the decision-making process and as such the Local Planning Authority cannot delay or decide to refuse an application for a certificate of lawfulness on the grounds of any infringement of a private covenant whether or not there is evidence to suggest this would be the case. Indeed, and with respect to this concern and within your email of 23 September 2024 to the applicant (Chris Cockroft copied in) where you rebut their opinion, you appear to accept the Local Planning Authority's remit is limited to planning law and does not extend to interpreting private covenants. Consequently, I have no reason to believe there is evidence or clear suggestion the Local Planning Authority was acting unreasonably or outside Planning law when issuing the certificate. As you will therefore appreciate, any private claim you decide to pursue regarding private covenants are matters you may wish to seek your own legal guidance and is not a matter the Local Planning Authority can assist you with.

With regard to your point that the applicant was not the owner at the time of the application and while the national standard application form asks the applicant to confirm their interest in the land/property, this information would only be checked or verified by officers if it is considered the ownership status had some material impact upon relevant considerations. If the applicant is not the owner and as set out in the national advice above, any such private rights to operate the use, including ownership rights, are not relevant or material to the decision to issue the certificate. Therefore, the Local Planning Authority would have no legal reason to consider withdrawing the certificate on the grounds of private rights that may or may not exist.

Finally and with respect to your view the Local Planning Authority are complicit in your claims relating to a breach of private covenants, I do not see any merit in any suggestion the Local Planning Authority were in any way encouraging a breach of a private covenant when administering the application for a certificate of lawfulness in accordance with Planning law and national guidance.

I trust the above further clarifies the Local Planning Authority's position in this matter. This response is provided in accordance with stage 2 of the Council's Corporate Complaints Procedure, details of this can be found at <https://www.kirklees.gov.uk/beta/contact-the-council/complaints-procedure.aspx> .

Yours sincerely

Kevin Walton
Senior Planner – Development Management
Growth & Regeneration Service