

Delegated Report

Planning Ref: 24/00526/CLE

Applicant: Cook

Ward: Twycross Sheepy & Witherley



**Hinckley & Bosworth
Borough Council**

Site: The Winnowing Barn Main Street Orton On The Hill

Proposal: Certificate of lawfulness for existing operational development comprising of the erection of four field shelters for equestrian use

1. Recommendations

1.1. Grant Certificate of Lawful Existing Use

2. Planning Application Description

2.1. This is an application for a Lawful Development Certificate use to confirm, on the balance of probabilities, that the operational development of four field shelters for an equestrian use at The Winnowing Barn, Main Street, Orton on the Hill have exceeded the relevant four-year time limit and are immune from enforcement activity

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

- Aerial Photography between 2017 and 2018
- Case Officer Report
- Email from John Williams Stables
- Planning Statement
- Photograph of the Building 2 from 2013
- Photographs of the Site from Right Move from 2011
- Right Move Listing
- Rural Land Register Map
- 4 x Signed Statements
- Site Location Plan
- Statement of Fact
- 3 x Statutory Declarations

3. Description of the Site and the Surrounding Area

3.1. The Winnowing Barn is a dwelling that is located within the identified settlement boundary of the rural hamlet of Orton on the Hill and the Orton on the Hill Conservation Area. However, it's associated fields where the field shelters are located are within the designated countryside. Beyond Main Street to the northwest and to the east and south (beyond Sheepy Lane) of the application site is open countryside.

4. Relevant Planning History**4.1 16/00493/FUL**

- Erection of agricultural storage and livestock building (revised scheme)
- Refused
- 25.08.2016

4.2 16/00211/FUL

- Erection of agricultural storage and livestock building
- Refused
- 18.04.2016

4.3 13/00030/FUL

- Change of use of land from agricultural to equestrian use and the formation of a menage
- Permitted
- 07.03.2013

4.4 06/00447/FUL

- Erection of 4 no. stables and hay store
- Permitted
- 14.09.2006

5. Publicity

- 5.1 The application is for a Certificate of Lawful Existing Use and no publicity is necessary. Nevertheless, a site notice was posted in the vicinity of the site and a notice was displayed in the local press.

6. Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary.

7. Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning Compensation Act 1991, provide advice and guidance in respect for applications for Certificates of Lawfulness of Existing Use.
- 7.2. Planning Practise 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.

8. Appraisal

- 8.1. The time period for immunity from enforcement action for this breach of planning control via building works is 4 years. As such, the key issue for consideration is whether the land and building in question have been substantially complete for a period of 4 years from the date of this application.
- 8.2. 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.
- 8.3. It is against this legislative framework that the application is assessed.
- 8.4. The Applicant has provided a statutory declaration confirming that all four shelters were constructed by 10 October 2012 and the Field Shelter 1 was relocated to its current position in 2014. Photographic images from 2011 from Rightmove's website were also submitted which demonstrates that Field Shelters 1 and 2 were in place at this time.
- 8.5. Whilst the submitted Appendices provide little detail in relation to Field Shelters 3 and 4, the application is supported by a further statutory declaration by the Applicant's wife and their daughter. Four additional signed statements have been submitted that state the field shelters have been on site for ten years, and an email from Jon Williams Stables Ltd confirmed that the Applicant purchased four mobile field shelters between 2008 and 2012. Ultimately, all four field shelters are visible on historic satellite imagery since 2015 as highlighted within the Applicant's Planning Statement.
- 8.6. The Council has no information to contradict the Applicant's claims, and, on the balance of probabilities, the four field shelters within the site can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

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, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

9.3 There are no known equality implications arising directly from this development.

9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

10.1. The information included in the application for a Certificate of Lawful Existing Use has sufficient evidence to demonstrate that the construction of four field shelters was substantially completed over ten years ago. On the balance of probabilities, the buildings works can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may be granted.

10.2. It is recommended that a certificate is issued because sufficient unambiguous evidence presented by the Applicant, combined with the evidence that the Local Planning Authority have in their possession, has shown that, on the balance of probabilities, the field shelters at The Winnowing Barn were substantially completed over four years ago, and are subsequently immune from any enforcement action.

11. Recommendation

11.1 **Grant Certificate of Lawful Existing Use.**