

Delegated Report

Planning Ref: 25/0045/CLE

Applicant: Mr and Mrs Tunnicliffe

Ward: Cadeby, Carlton, Market Bosworth & Shackerstone

Site: Westfields Cottage, Carlton Road, Market Bosworth



Hinckley & Bosworth
Borough Council

Proposal: Certificate of existing lawful development relating to the change of use from agricultural land to domestic garden land

Officer: Ashleigh Gade (Senior Planning Officer)

1. Recommendation

1.1. Grant Certificate of Lawful Existing Use

2. Planning application description

- 2.1 This is an application for a Lawful Development Certificate to confirm, on the balance of probabilities, whether the land in question has been used as residential garden as opposed to its former use as agricultural land for a period exceeding 10 years.

3. Description of the site and surrounding area

- 3.1 The application site is located within the designated open countryside north-west of Market Bosworth. The site contains a two-storey rendered semi-detached dwelling with a pitched roof form and a projecting brick front porch. The site also contains a detached double garage building to the east of the dwelling and small garden buildings to the rear.
- 3.2 To the rear of the dwelling is an area of hardstanding and beyond that a large, grassed area with scattered small trees. The grassed area is delineated by hedgerow adjacent to Carlton Road, low picket fencing to the south, and a mixture of low picket fencing and taller closeboarded fencing along the shared boundary with Westfield Farm Cottage to the west.

4. Relevant planning history

- 07/00637/COU
- Change of use of land from agricultural land to residential curtilage
- Refused
- 06.08.2007

5. Publicity

- 5.1. There is no statutory requirement to consult third parties on applications for a lawful development certificate, however in this case it was elected to display a sign in the vicinity of the site and send letters to neighbours.
- 5.2. No comments were received.

6. Consultation

- 6.1. There is no statutory requirement to consult third parties on applications for a lawful development certificate, however in this case Carlton Parish Council were consulted. The Parish Council have no objections to the proposal.

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 through change of use is 10 years. As such, the key issue for consideration is whether the land in question has been used continuously for a period of 10 years or more as residential garden land.
- 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 evidence provided by the applicant includes a purchase agreement dated 26 July 2005 referencing the contract for applicant's purchase of the land within the application site and demonstrating the extent of the land to be purchased, a land registry letter (dated) confirming the applicant's ownership of the land parcel surrounding the dwelling, and a letter from HBBC Development Services acknowledging the intent to fence the land within the application site and confirming that the use of the land at that time was agricultural.
- 8.5. The applicant did not provide aerial imagery with the evidence for this application; however, it is noted that historic aerial imagery of the site is otherwise readily accessible and therefore has been reviewed to assist in determination. The aerial imagery available begins in December 2000 and shows the southern extent of the application site as clearly forming part of an agricultural field. The next image is dated 24 July 2006 and shows fencing having been established around the bounds of the application site. The land to the rear of the dwelling that was in agricultural use in December 2000 is shown by July 2006 to evidently be in use in association with Westfields Cottage by way of groundcover type and colour and the presence of a vegetable garden or similar domestic planting area.
- 8.6. The subsequent aerial imagery from 2010, 2011, 2015, 2016, 2018, 2020, 2021, 2022 and 2023 shows evolution of the elements on the land over time but evidently demonstrate the continued use of the land as a domestic garden. The fencing arrangement first seen in the 26 July 2006 aerial image remains consistent throughout the subsequent aerial images and was observed in this same configuration by the Planning Officer on a site visit undertaken on 22 May 2025.
- 8.7. The information and evidence reviewed confirms that, on the balance of probability and from the totality of the evidence reviewed, it can be assumed that the land has

been in use continually as residential garden land for a continuous period of over 10 years. It is reasonably assumed that any gaps in evidence provided, whereby aerial imagery is not available, it can be expected that the land continued use as garden land. No information has been provided to the Council which contradicts this.

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. For the reasons outlined above, it is evidenced and judged that land has been used for a continuous period more than 10 years as residential garden land. No evidence has been submitted to contradict this. Therefore, the Council is satisfied on the balance of probability that a Certificate of Lawful Development can be issued.

11. Recommendation

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