

Delegated Report

Planning Ref: 26/00392/CLE

Applicant: Messrs J Freeman

Ward: Barlestone, Nailstone and Osbaston



Hinckley & Bosworth
Borough Council

Site: Heath Lodge Farm, Bagworth Road, Newbold Heath

Proposal: Certificate of existing lawful development for the use of the highlighted land as garden land within the residential curtilage of Heath Lodge Farm Farmhouse

Officer: Ashleigh Gade (Senior Planning Officer)

1. Recommendation

1.1. Refuse 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, that the land in question has been used as residential garden land 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 of Newbold Heath. The site is located within land forming part of Heath Lodge Farm.
- 3.2 The application site includes land to the west and north-west of Heath Lodge Farm farmhouse as well as land to the north and north-east comprising the internal access track to the farmhouse and the main access roadway from Bagworth Road into the wider site.
- 3.3 The application site comprises, in addition to the internal roadway areas as noted above, an annexe for ancillary accommodation associated with Heath Lodge Farmhouse, various small outbuildings located to the west and south-west of the main farmhouse and a number of trees and other small plantings. The area, excluding the internal roadway areas, has a grassed surface.
- 3.4 The application site is bounded to the south by hedgerow. To the west, a section is bounded by a row of trees and the remainder is open to the functional farmyard areas adjacent existing livestock buildings. To the north the site is open to the internal roadway, and to the west is the Heath Lodge Farm farmhouse and associated land.

4. Relevant planning history

4.1 24/00970/FUL

Erection of livestock building
Planning Permission
04.03.2025

4.2 23/00828/FUL

Single storey annexe to be used as ancillary accommodation to Heath Lodge Farmhouse
Planning Permission
14.11.2023

It is noted that the single storey annexe approved by 23/00828/FUL was for the temporary siting of the annexe building only. The temporary permission expires on 30 November 2026 at which time Condition 3 of 23/00828/FUL requires the land upon which the building is sited to be restored to its former condition.

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 send letters to neighbours.
- 5.2. No responses were received.

6. Consultation

- 6.1. There is no statutory requirement to consult third parties on applications for a lawful development certificate. As such, no consultations were undertaken on this application.

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 of applications for Certificates of Lawfulness of Existing Use.
- 7.1. 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 concept of residential curtilage has relevance as section 55(2)(d) of the 1990 Act records that the use of any land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken for the purposes of the Act to involve development of the land. Although the residential curtilage will frequently equate with the residential planning unit, it is not uncommon for land beyond the curtilage, but nonetheless in the same planning unit, to be in use for residential purposes incidental to the enjoyment of a dwellinghouse. Therefore, lawful incidental residential use does not necessarily denote curtilage land.
- 8.5. There is no statutory or authoritative definition of the term curtilage. In the absence of this, reliance is placed in interpreting its meaning on case law. In Sinclair-Lockhart's

Trustees v Central Land Board [1950] it was held that for land to constitute curtilage 'it is enough that it serves the purpose of the house or building in some reasonably useful way'. Three criteria for identifying curtilage were laid down by the Court of Appeal in Sutcliffe v Calderdale BC [1982], namely the physical layout, the past and present ownership, the past and present use and function of the land.

- 8.6. This definition was also considered by the High Court in Burford v Secretary of State for Communities and Local Government and Test Valley Borough Council [2017]. In Burford, the Judge confirmed that these are matters of planning judgement for the decision maker, and a decision can only be challenged on the grounds of being so unreasonable that no reasonable decision maker would reach the same decision. As such it is entirely dependent on the facts of the case and a matter for the local planning authority, or the Inspector/Courts on Appeal.
- 8.7. The inspector in Burford found that the land was not curtilage because it was not attached to the dwelling house forming one enclosure with it. The Judge's conclusion was that the function of the land in question, whilst being relevant to the question of curtilage, was not conclusive. It must therefore follow that the land forming one enclosure and an absence of a hedge or fencing cannot alone be determinative. It is clear from Burford that it is about the individual facts and that the use, function, extent, ownership and any enclosure are all relevant in the assessment of curtilage.
- 8.8. The evidence provided by the applicant is in the form of three publicly available aerial images dated 21 May 2023, 16 July 2021 and 24 July 2006.
- 8.9. The aerial image dated 24 July 2006 shows the portion of the application site to the west of the farmhouse and does not include the remainder of the red line area which extends along the internal roadway. The 2006 image shows the area to the west of the farmhouse as being grassed land with a number of small to medium trees. The site is shown to be bounded to the west, south and south-east by hedgerow and to the north-west by a line of trees. To the east the site is shown to be open to the farmhouse where paving runs east-to-west across the centre of the grassed area. To the north, shadows suggest the presence of a low-height fence separating the land from the internal driveway area.
- 8.10. The aerial image dated 16 July 2021 again shows only the portion of the application site to the west of the farmhouse and omits the remainder of the red line area along the internal roadway. The image suggests puncturing of the hedgerow area which previously separated the land to the south of the farmhouse and the application site area to the west. Domestic features appear within the application site the south and south-east of the land. The number of scattered trees can be observed to have been reduced. The land otherwise remains bounded by hedgerow to the south and in part to the west. The strip of paving through this land leading to the farmhouse remains. To the north of the site, shadows indicate the land remains separated from the internal driveway area by low-height fencing.
- 8.11. The aerial image dated 21 May 2023 again only shows the portion of the application site west of the farmhouse and omits the roadway areas otherwise within the red line area. The 2023 image appears to show further signs of domestic buildings within the south-western section of the site. The remainder of this area of the application site appears generally consistent with the 2021 image.
- 8.12. It is noted that there are also further aerial images of the site available that were not submitted by the applicant. These include an aerial from 2011 that shows what

appears to be domestic play equipment in the southern area of the application site to the west of the farmhouse.

- 8.13. The most recent available aerial image is from 2025 which shows the temporary ancillary annexe building, approved in 2023, within the application site. The remainder of the site features remain consistent with previous aerals.
- 8.14. The Planning Officer undertook a site inspection of the application site on 16 June 2026. It was confirmed on site that the grassed area to the west of the farmhouse is fenced to the north, separating this space from the internal movement areas of the site, as expected based on the shadows in aerial imagery. It is also noted that the aerial imagery has shown since at least 2015 a series of small shadows over the northern section of the grass which, at the site inspection, were confirmed to be small domestic garden decorations including birdbaths and decorative stone features.
- 8.15. Notwithstanding the above with regard to the area of the application site immediately to the west and south-west of the farmhouse, it is noted that the red line boundary for this application extends to include parking areas to the north of the farmhouse, a section of land partially including internal movement areas on the site and otherwise comprising a strip of land adjacent to the internal driveway comprising grass and a line of trees, and then extending along the access roadway from Bagworth Road into the wider site.
- 8.16. The internal movement areas of the site including all internal roadways and driveway areas, serve areas that form part of the farming operations from the site. In particular, the access roadway from Bagworth Road is the principal access point for the site and accommodates all farm traffic entering and existing the wider Heath Lodge Farm site. The internal driveway areas to the north of the application site provide internal access to the farmhouse but also provide access to the southern end of the cluster of agricultural buildings on the site.
- 8.17. It is also not considered that any sufficient evidence has been provided to demonstrate that the strip of land adjacent to the internal driveway area constitutes domestic garden land. This land is not visible or included within the aerals provided by the Applicant to support the application, and has not otherwise been observed to have a functional link to the domestic garden space of the farmhouse.
- 8.18. It is therefore considered that there are areas of the site within the red line boundary that demonstrably do not constitute residential garden land, and have not historically been, nor are currently being, used for such purpose.
- 8.19. It is noted that the Local Planning Authority (LPA) made contact both written and in person at the inspection of the site to advise the Applicant and their Agent prior to determination that the red line boundary as submitted could not be supported. The Applicant was given the opportunity through this communication to submit an amended red line boundary plan to resolve this conflict.
- 8.20. Notwithstanding this, no revisions to the red line boundary have been received by the LPA at the due date for determination for this application.
- 8.21. It is therefore concluded that the whole of the land included within the red line boundary cannot be adequately proven or demonstrated to have been in use as residential garden space over the preceding 10 years. Further, based on the physical layout of the site, the past and present ownership, use and function of the land it is not considered that the land within the red line boundary as a whole can be

considered to meet the definition of residential curtilage when assessed against the relevant criteria as detailed in this section of the report.

- 8.22. The LPA are therefore unable to justify the granting of the certificate in this instance.

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 the whole of the land included within the red line boundary for this application cannot be demonstrated to have been used as residential garden land or to meet the definition of residential curtilage when assessed against the relevant criteria. Therefore, the Council is satisfied that a Certificate of Lawful Development cannot be issued in this instance.

11. Recommendation

- 11.1 **Refuse Certificate of Lawful Existing Use.**