

Delegated Report

Planning Ref: 23/00502/CLE

Applicant: Mr Robert Beaumont

Ward: Newbold Verdon with Desford and Peckleton

Site: The Oaks, Main Street, Botcheston

Proposal: Continued use of land as residential garden and retention of machinery shed and summer house



Hinckley & Bosworth
Borough Council

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 for an existing use to confirm, on the balance of probabilities, that the existing buildings in question has been used erected for a period of four years. In addition, that the site area has been used as residential garden for a period of 10 years.

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

- Site Location Plan
- Site Layout Plan
- Planning Statement (Including Site Photographs and Aerials)
- Signed Statutory Declaration

3. Description of the site and surrounding area

3.1. The site is located to the south of Main Street, Thornton, the dwelling (The Oaks) is situated approximately 12 metres to the North West, and the site is accessed by the existing access which serves the dwelling. To the south, the site abuts the open countryside, with residential properties to the north. The site gradually slopes away to the south from Main Street. There is a public footpath which runs north to south to the west of the site.

4. Relevant planning history

08/00843/FUL

ERECTION OF ONE DWELLING

Planning permission

29.10.2018

14/00446/COU

Change of use of land to form part of the existing residential curtilage including demolition of outbuilding and reconstruction of garage and store

Planning permission

04.09.2014

23/00333/AGDO

Proposal for a lake no larger than 980 square metres to be used for horticultural purposes.

Prior approval refused

09.05.2023

5. Publicity

- 5.1. The application is for a Certificate of Lawful Existing Use and no publicity is necessary.

6. Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary.
- 6.2. However, both Desford and Nailstone Parish Council were consulted. Desford Parish Council responded with comments relating to the certificate. The comments queried the machinery shed being within residential curtilage and not within the wider site owned by the applicant.

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 is 4 years for operational development and 10 years for the change of use. As such, the key issue for consideration is whether the buildings in question has been erected for a period of 4 years from the date of this application, and whether the area has been used as residential garden for a period of 10 years.
- 8.2. Initially, looking at the buildings on site, evidence has been provided within the Planning Statement, including aerial photographs which show the buildings on site have been in situ for a period of longer than 4 years. The aerial photographs alongside the attached photographs of the building elevations is sufficient in evidencing that the buildings are immune from planning enforcement actions and as such we would be able to grant the certificate on these grounds.
- 8.3. The use of the land as residential garden for a period of over 10 years has been discussed within the planning statement. The aerial photographs provide a degree of evidence, showing that the site was fenced off and managed separate to the wider site and open fields from 2015, but no earlier than 2011. It is therefore assumed that this use began within this 4 year period. Whilst no further evidence has been provided, on the balance of probabilities alongside the sworn statutory declaration from the land owner, it can be determined that the residential garden use has been in situ for a period of 10 years.
- 8.4. For the reasons outlined above, it therefore appears that the outbuildings have been in situ for over a period of 4 years from the date the application was made, and similarly the residential garden use for 10 years.

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 both the outbuildings and residential garden use have been in position for over a period of 4 and 10 years respectively. No evidence has been submitted to contradict the Council's own aerial images and evidence, therefore there is no good reason to refuse this application.

11. Recommendation

11.1 **Grant Certificate of Lawful Existing Use can be issued.**