

Delegated Report

Planning Reference: 25/00176/CLP
Applicant(s): Mrs A Morris
Ward: Ambien



Hinckley & Bosworth
Borough Council

Application Site: Land at Higham Lane, Stoke Golding

Proposal: Certificate of proposed lawful development for the additional change of use of land to allow the operation of a dog walking field business whilst also retaining the site's existing agricultural use

Case Officer: Sullivan Archer (Senior Planning Officer)
Date: 23/04/2025

1. Recommendations

1.1. Refuse Certificate of Lawful Proposed Development

2. Planning Application Description

2.1. This application seeks a Certificate of Lawful Proposed Development to confirm that a proposed mixed use of an existing agricultural field as a commercial Use Class E use associated with a dog walking field business and as the original agricultural use at land at Higham Lane, Stoke Golding is lawful development.

2.2. The proposal includes the provision of 375sqm of hardstanding for off-street parking and new timber fencing and gates. The proposed dog walking use shall be utilised during daylight hours. No details have been provided in relation to the number of users of the new use.

3. Description of the Site and the Surrounding Area

3.1. The application site comprises a rectilinear agricultural field that is located in the designated open countryside to the south of the identified settlement boundary of Stoke Golding. The application site is wholly rural in character and is surrounded by agricultural fields. The Ashby de la Zouch Canal and its associated Conservation Area and Public Right of Way T54 run north-to-south to the west of the site. The site is currently managed as an intensive livestock grazing field. The site benefits from an existing access onto Higham Lane on its bend as it begins to head to the west. Higham Lane is an adopted and classified 'C' road that is subject to the National Speed Limit. Public Footpath U38 runs east-to-west adjacent the southern boundary of the application site.

3.2. Three applications (19/00225/GDO, 19/00415/GDO, and 19/00563/FUL) for the provision of an agricultural building within the site have previously been refused.

4. Relevant Planning History

4.1 21/00037/PP

- Erection of building and change of use of land to form a dog day care facility (part-retrospective) (revised scheme)
- Appeal Dismissed
- 11.02.2022

4.2 21/00251/FUL

- Erection of building and change of use of land to form a dog day care facility (part-retrospective) (revised scheme)
- Refused
- 27.07.2021

4.3 20/00030/PP

- Erection of building and change of use of land to form a dog day care facility
- Appeal Dismissed
- 18.01.2021

4.4 20/00570/FUL

- Erection of building and change of use of land to form a dog day care facility
- Refused
- 18.08.2020

4.5 18/01202/FUL

- Erection of a steel frame barn for the purposes of agriculture to provide a dog day care facility
- Withdrawn
- 30.01.2019

5. Publicity and Consultation

5.1. There is no statutory requirement to consult third parties on an application for a lawful development certificate. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is a good reason to believe they possess relevant information about the content of a specific application.

5.2. Notwithstanding this, 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.

5.3. In this instance, a site notice was posted in the vicinity of the site.

5.4. No responses to the site notice have been received.

6. Policy

6.1 Section 192 of the Town and Country Planning Act 1990.

6.2 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

7. Appraisal

7.1 Section 192 of the Town and Country Planning Act 1990 enables any person with the opportunity to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land would be lawful.

7.2 The statutory framework covering, 'lawfulness,' for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990. Section 191(2) of the Town and Country Planning Act 1990 confirms that uses and operations are lawful at any time if:

(a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7.3 Paragraph 55(1) of the Town and Country Planning Act 1990 defines, 'development,' as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.

7.4 In accordance with National Planning Practice Guidance (NPPG), the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable to a local planning authority to understand exactly what is involved.

7.5 Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, this does not preclude another application being submitted later on if more information can be produced.

7.6 The NPPG confirms that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is, or would be, lawful. Planning merits are not relevant at any stage in this particular application.

- 7.7 The submitted Planning Statement solely refers to the planning merits of the scheme. As highlighted in the previous paragraph of this Report, the planning merits of the development are not material considerations during the determination of this application.
- 7.8 Within the submitted Application Form, the Applicant stated that this use can be supported through Permitted Development Rights.
- 7.9 It is noted that whilst agricultural buildings can be converted to flexible commercial uses under Class R of Part 3 of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), these Permitted Development Rights do not include the conversion of solely agricultural land into flexible commercial uses.
- 7.10 It is considered that the introduction of a dog walking business to the site, would, in the absence of any information to indicate otherwise, represent a material change in the use of the site. The proposed mixed use of the site as agricultural land and as a commercial dog walking business use does not benefit from Permitted Development Rights. The Applicant has failed to demonstrate that the proposal represents lawful development and as such the scheme will require planning permission.
- 7.11 In addition, the creation of hardstanding for a new non-domestic and non-agricultural use does not benefit from Permitted Development Rights. As a result, the provision of hardstanding within this site for off-street parking represents development and a material change in the use of the land. Therefore, the Applicant has failed to demonstrate that the proposal represents lawful development and as such the scheme will require planning permission.
- 7.12 In conclusion, the Applicant has failed to demonstrate that the proposal represents lawful development and therefore the scheme will require planning permission. The proposal does not benefit from Permitted Development Rights and represents a material change and significant intensification in the use of the site. In light of the above, the development is not considered to be lawful, and a Lawful Development Certificate is refused.

8. Equality Implications

- 8.1 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; and

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.2 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.

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

8.4 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).

9. Conclusion

9.1 The Applicant has failed to demonstrate that the proposed mixed use of the site as agricultural land and as a commercial dog-walking facility at land at Higham Lane, Stoke Golding represents lawful development. The scheme represents a material change and significant intensification in the use of the site. In light of the above, the development is not considered to be lawful, and a Lawful Development Certificate is refused.

9.2 This conclusion is made on the basis of details provide by the Applicant, and as shown on the following documents received by the Local Planning Authority:

- Application Form (submitted: 25.02.2025)
- Planning Statement (submitted: 25.02.2025)
- Site Location Plan (submitted: 25.02.2025)

10. Recommendation

10.1 Refuse Certificate of Proposed Lawful Development