

Delegated Report

Planning Ref: 23/00777/CLE
Applicant: Mr and Mrs Wright
Ward: Markfield Stanton & Fieldhead



Hinckley & Bosworth
Borough Council

Site: Willow Farm Thornton Lane Stanton Under Bardon

Proposal: Certificate of Lawful Development Use of existing agricultural bungalow as an unrestricted residential dwelling (C3)

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 an existing residential dwelling has been occupied without complying with its restrictive occupancy condition for a continuous period of ten years or more at Willow Farm, Thornton Lane, Stanton Under Bardon.

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

- Application Form
- Block Plan
- Planning Statement
- Schedule of Submitted Documents
- Site Location Plan

2.3. This application has been submitted in conjunction with a Lawful Development Certificate Application, 23/00783/CLE, and a full planning application, 23/00784/FUL. The first of which seeks to determine the lawfulness of the use of all the agricultural buildings on site as stabling and equine storage in association with a livery business for a continuous period in excess of ten years, and the second seeks full planning permission for the retrospective change of use of agricultural land to a commercial equestrian use alongside the retention of an outdoor riding manège.

3. Description of the Site and the Surrounding Area

3.1. The existing bungalow was constructed via planning permission 86/00100/4 on 25 March 1986. Condition 03 of this planning permission stated that, *"The occupation of the dwelling shall be limited to a person wholly or mainly employed, or last employed locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, or a dependant of such a person residing with him, or a widow or widower of such a person."* This condition was applied because the site lies in an area where the Local Planning Authority would not normally grant permission for residential development. This permission was therefore granted only because of special agricultural need and the premises should accordingly be occupied by persons connected with agriculture.

3.2. The property is a single storey, detached, brick bungalow within Willow Farm. The Farm consists of two residential dwellings, several farm agricultural buildings and a manege. Willow Farm is located to on the north-western side of Thornton Lane and

is accessed via a 243m long private track. Thornton Lane is an adopted, but unclassified road subject to the National Speed Limit.

- 3.3. The application site is located within Charnwood Forest and the National Forest and outside of any identified settlement boundary in the designated open countryside. The site is verdant in character and is surrounded by open agricultural fields. To the north and northeast of the site is Public Right of Way, Footpath R122, and to the west and northwest of the site is Public Right of Way, Footpath R9.

4. Relevant Planning History:

- 4.1 **23/00784/FUL**
- Change of use of land from agricultural to equestrian use and retention of outdoor riding manege
 - Awaiting Decision
 - TBD
- 4.2 **23/00783/CLE**
- Certificate of Lawful Development Use of existing agricultural buildings as livery stables and associated equine storage as part of a livery business
 - Granted
 - 04.10.2023
- 4.3 **93/00686/4**
- Extension to bungalow
 - Permitted
 - 14.09.1993
- 4.4 **86/00100/4**
- Erection of detached agricultural bungalow
 - Permitted
 - 25.03.1986
- 4.5 **80/01543/4**
- Erection of two farm buildings
 - Permitted
 - 23.12.1980
- 4.6 **80/00181/4M**
- Erection of agricultural buildings
 - Permitted
 - 23.12.1980
- 4.7 **79/00663/4**
- Erection of agricultural buildings
 - Approval of Reserved Matters
 - 22.08.1979
- 4.8 **77/01376/4**
- Erection of farm bungalow and buildings
 - Outline Planning Permission
 - 08.05.1978

5. Publicity

- 5.1. The application is for a Certificate of Lawful Existing Use and no publicity is necessary.
- 5.2. Nevertheless, a site notice was posted in the vicinity of the site, but no responses were received.

6. Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary.
- 6.2. Nevertheless, the Local Highway Authority, and the Council's Drainage, Pollution and Waste Management Officers were consulted on the application, and none of them had any objections to the Certificate.

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 10 years. As such, the key issue for consideration is whether the land and building in question have been used continuously for an agricultural use for a period of 10 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 claims that the agricultural use of the site ceased in 2001 after the Foot and Mouth epidemic, and the site has been used as a livery since 01 January 2003. To support this claim, the Applicant has provided Council Tax records, E.On electricity letters, NFU mutual certificates of public and product liability insurance, NFU mutual correspondence, undated site photographs and water utility bills from between 2013 and 2023.
- 8.5. The electricity letter and water utility bills demonstrate that the property has been utilised as a residential dwelling since 14 December 2012, and 05 October 2012 respectively. The Applicant has also demonstrated that they have paid council tax on the property since 12 March 2013. Therefore, on the balance of probabilities, the property has been utilised as a residential dwelling for a continuous period of over ten years. However, this information does not suggest that the property has been

utilised by a person that is wholly or mainly employed, or last employed locally in agriculture.

- 8.6. Nevertheless, the Applicant has provided NFU mutual certificates of public and product liability insurance since 26 November 2012 for a livery stable proprietor and woodland/landowner.
- 8.7. Upon undertaking a site visit, the Planning Officer noted that the application site was used entirely as a livery business. This was seen through the provision of stables, equine equipment, and the number of horse boxes and trailers that were parked within the site. Based on historic satellite images, the manege has also been present within the site since at least 2006.
- 8.8. Furthermore, there are traffic signs indicating the presence of horses, which have been formally established along Thornton Lane near the application site. Based on historic Google Street View images, these traffic signs have been adjacent to the application site the since at least 2009.
- 8.9. By virtue of these factors, it is considered that the occupation of the agricultural bungalow at Willow Farm, Thornton Lane, Stanton Under Bardon has been occupied by someone not solely or mainly employed, or last employed locally in agriculture or forestry for an uninterrupted period of 10 years. The Council has no information to contradict the Applicant's claims, and, on the balance of probabilities, the use of the application 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, the occupation of the agricultural bungalow

at Willow Farm, Thornton Lane, Stanton Under Bardon has been occupied by someone not solely or mainly employed, or last employed locally in agriculture or forestry for an uninterrupted period of 10 years. On the balance of probabilities, the use of the application site 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 occupation of the agricultural bungalow has been occupied by someone not solely or mainly employed, or last employed locally in agriculture or forestry for an uninterrupted period of 10 years and is subsequently immune from any enforcement action.

11. Recommendation

11.1 Grant Certificate of Lawful Existing Use.