

Delegated Report

Planning Ref: 25/00219/CLE

Applicant: Mrs Sandra Gayton

Ward: Newbold Verdon with Desford and Peckleton



Hinckley & Bosworth
Borough Council

Site: The Oaks, Kirkby Lane, Newbold Verdon, Leicester

Proposal: Certificate of existing lawful development for the use of agricultural land as residential garden and for the existing development and use of various outbuildings for residential use in association with The Oaks, Kirkby Lane, Newbold Verdon

1. Recommendations

1.1. Grant certificate of lawfulness

2. Planning application description

- 2.1 The proposal is for a Lawful Development Certificate for an existing use to confirm, on the balance of probabilities, that the land in question has been used as a residential curtilage (garden) as opposed to its former use as agricultural land for a period of 10 years. And that the existing development of the various outbuildings occurred over four years ago.

3. Description of the site and surrounding area

- 3.1 The application site is a detached bungalow on the eastern edge of Newbold Verdon, falling outside of the defined settlement boundary. There is a hardstanding courtyard/parking area to the front to serve the restaurant. The site lies in the centre of Newbold Verdon and is surrounded on three sides by residential dwellings with open space and Newbold Verdon Library to the west.

4. Relevant planning history

- None

5. Publicity

- 5.1. The application is for a Certificate of Lawful Existing Use therefore no publicity is necessary, however a site notice was placed within the vicinity of the site.
- 5.2. No comments were received.

6. Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary. Newbold Verdon Parish Council was consulted however no response was received.

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.

- 7.1. 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 is 10 years for the change of use and four years for the operational works (under current transitional arrangements). 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 and whether the buildings were developed over 4 years ago.
- 8.2. The evidence provided by the applicant includes photographs of the areas which correspond with domestic use, aerial imagery documenting the parcels of agricultural land changing from agricultural land to garden, and signed statements from the applicant and neighbour.
- 8.3. The aerial imagery includes historic photographs beginning December 2000 and documents the transition of the northernmost part of the site from agricultural land to residential garden with additional imagery from 2006, 2011, 2015, 2016, 2018, 2020, 2021, and 2023. These images show the initial change of use, as well as the continuous use of the land as garden land, which is clearly evidenced through planting and landscaping, and siting of domestic outbuildings. The other photographs and signed statements provide further evidence of the continuous use of the land as garden land for a period of more than 10 years.
- 8.4. Regarding the outbuildings, the evidence and aerial imagery provided shows the outbuildings in situ from 2000, mainly located in "Areas 1 & 2" as referred to by the Applicant, which are the southernmost sections of what is proposed as garden land. There is an additional shed building and outbuilding in area 3 to the north, which is also evident in the historic aerial photograph.
- 8.5. The information and evidence provided confirms that, on the balance of probability and from the totality of the evidence provided, it can be assumed that the land has been in use continually as residential garden land for a continuous period of over 10 years. Whilst there are some gaps in the timeline of the evidence provided, it is beyond reasonable doubt that the areas has been continually used as garden land and that the buildings have been used for domestic purposes for a continuous period of more than 10 years. Furthermore the various outbuildings have been in situ for over 4 years. For this reason, the granting of the certificate of lawful use can be granted. 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 the applicant or Councils aerial images and evidence, therefore there is no good reason to refuse this application, and the Council is satisfied on the balance of probability that a certificate of Lawful Existing Use can be issued.

11. Recommendation

- 11.1 **Grant Certificate of Lawful Existing Use/Development.**