

Delegated Report

Planning Ref: 24/00684/CLE

Applicant: Mr G Hunt

Ward: Atherstone

Site: Greenleaves, Pinwall Lane, Pinwall, Atherstone



Hinckley & Bosworth
Borough Council

Proposal: Lawful Development Certificate to establish existing use of agricultural land as garden

Recommendations

1.1. Grant Certificate of Lawful Existing Use

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 land in question has been used as a residential garden as opposed to the former agricultural land.
- 2.2. The following documents/information have been submitted to support the application:
 - Amended Site Location Plan (amended red edge line) received on 16 August 2024.
 - Evidence Document containing an application for, a planning statement and photographs (from 2008 to 2024).
- 2.3 The proposed certificate of lawful existing use is for the use of the land within the amended red edged site plan only and not for any structures the applicant has placed on the land which have not been included in the application.

Description of the site and surrounding area

- 3.1. The application property is a two storey semi-detached dwelling. The property is located within the open countryside. It is the first dwelling in a small collection of dwellings located to the north of Pinwall Lane.
- 3.2. The neighbouring properties are also two storey semi-detached dwellings and they are of a similar design to the subject property and are finished in similar materials. The property benefits from a large side garden with a pond and lots of landscaping. There is also a large outbuilding in the rear garden. Open countryside is located to the rear of the property.

Relevant planning history

08/00209/FUL- Extension and alteration to dwelling and reposition of access driveway. Approved.

12/00033/S- Planning enforcement investigation in relation to the change of use of land. Closed- not expedient to enforce.

Publicity

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

Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary.
- 6.2. However, the following consultations were conducted:
- 6.3. Sheepy Parish Council:

'NEUTRAL Please note, this response is based on documents available on HBBC Planning Portal as at 20th July 2024. Sheepy Parish Council kindly request that it is notified and consulted on any later changes to this application so as to ensure full compliance with the Sheepy Parish Neighbourhood Plan made May 2022.

Sheepy Parish Council has reviewed the above application 24/00684/CLE -(Greenleaves, Pinwall Lane, Pinwall, Lawful Development Certificate for the existing use of agricultural land as garden) and notes the reference to 'The Planning and Compensation Act 1991 (section 4): 171B' and therefore will respect HBBC's wider planning regulation knowledge, not necessarily known by Sheepy Parish Council, on this matter, to ensure it is be in line with the policies, which should be considered collectively, in the Sheepy Parish Neighbourhood Plan made May 2022.

Furthermore, as this site is in the countryside, and therefore to prevent subsequent housing or commercial development, Sheepy Parish Council request that, if permission is granted, Hinckley & Bosworth Borough Council gives 2 consideration to adding a condition, 'The proposed existing use of agricultural land as garden shall be restricted to the use applied for and shall always remain part of Greenleaves, Pinwall Lane, Pinwall, and shall not be sold, leased nor otherwise disposed of separately from, the remainder of the premises.'

Sheepy Parish Council also request that, in keeping with Policy S1 (Countryside) of the Neighbourhood Plan, the boundary hedgerow is retained, and limits applied to the size of any subsequent planning applications for outbuildings. END'.

Officer Note- As this is an application for a Certificate of Lawfulness the policies of the Development Plan are not relevant. The application is purely evidential based and is to assess whether the land has been used continuously as garden for a period of at least 10 years. It is therefore also not possible to add conditions for this type of application.

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.

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. 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. The site location plan has been amended during the application to enclose the land for which the evidence relates. The wider parcel of land enclosed in the red line originally is under the applicants ownership but there is not sufficient evidence to demonstrate that the parcel to the north west of the amended application site has been used for garden. The applicants agent has been made aware of this and the below assessment only relates to the amended smaller area now enclosed by the red line.
- 8.3. On reviewing planning application 08/00209/FUL it appears that the LPA were aware of an unlawful change of use of land, with a note to applicant advising the applicant to apply for planning permission. A subsequent enforcement investigation occurred in 2012 which also appears to have found evidence of the change of use. It was not judged expedient to enforce the change of use at the time.
- 8.4. The information and evidence provided within the Evidence Document submitted by the applicant includes dated photographs from 2008 to 2024. Considering the Evidence Document, planning history and a separate review of aerial images, 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 period of over 10 years, and 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. It is considered sufficient evidence has been submitted demonstrating the use of the land as garden for the subsequent 10 years at a minimum.

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).

Conclusion

- 10.1. For the reasons outlined above, it is evidenced and judged that land has been used continuously for a period in excess of 10 years as residential garden land. No evidence has been submitted to contradict the Councils own aerial images and evidence, therefore there is no good reason to refuse this application and the Council is satisfied on the balance of probability.

Recommendation

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

Note

1. It should be noted by the applicant that the LPA are only granting consent for the use of the land within the amended red edged site plan and not for any structures they have placed on the land which may still need planning permission. The LPA advise the applicant to ensure they receive relevant planning permission prior to undertaking other development on this land in the future.