

Delegated Report

Planning Ref: 23/01143/CLE

Applicant: Mr M Harrison

Ward: Ambien

Site: 44 Arnold Road, Stoke Golding

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



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 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:

- Site Location Plan
- Evidence Document containing receipts, plans and photographs.

3. Description of the site and surrounding area

3.1. The site is located at within the cul-de-sac of Arnold Road, Stoke Golding. The land in question is to the rear of the dwelling and is fenced off from the remaining agricultural field which has planning permission granted for 50+ new homes and as such is no longer actively used as agricultural land.

4. Relevant planning history

None

5. 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.

6. 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. HBBC Green Spaces: No comments received.

6.4. Stoke Golding Parish Council: No comments 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.

- 7.2. 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 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 information and evidence provided within the Evidence Document, which includes aerial photographs, receipts and photographs of the land, 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. Whilst an enforcement investigation was closed by the Council in 2000 (relating to the change of use of this land) the information on file is not conclusive and in any event sufficient evidence has been submitted demonstrating the use of the land as garden for the subsequent 10 years at a minimum.

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 period in excess of 10 years as residential garden land. 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 and the Council is satisfied on the balance of probability.

11. Recommendation

11.1 Grant Certificate of Lawful Existing Use can be issued.