

Supporting Statement for Certificate of Lawfulness

Continued use of land as residential garden and retention of machinery shed and summer house

The Oaks, Main Street, Botcheston, Leicestershire, LE9 9FF

Client Name: Mr Robert Beaumont

Date of Issue: April 2023

Local Authority: Hinckley and Bosworth Borough Council

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1.0 INTRODUCTION

- 1.1 This statement has been prepared to accompany an application for a Certificate of Lawfulness concerning the use of land at residential garden and the erection of a machinery store and summer house at The Oaks, Main Street, Botcheston. The property lies within the administrative area of Hinckley and Bosworth Borough Council.
- 1.2 This application for a Certificate of Lawfulness seeks to establish the following:
 - (i) That the land to the south of the main dwellinghouse has been used as residential garden in association with the host dwellinghouse for a period in excess of 10 years prior to the date of this application. The land in question is identified in blue on plan JJM1.
 - (ii) Operational development involving the construction of a machinery store in the north-western part of the site. The machinery store was carried out and substantially completed more than of 4 years ago. The building is identified a 'C' on plan JJM1. The machinery store measures 5 metres by 6 metres and is 2.8 metres in height to the ridge.
 - (iii) Operational development involving the construction of a summer house in the south-western part of the site. The summer house was carried out and substantially completed more than of 4 years ago. The building is identified a 'D' on plan JJM1. The summer house measures 4 metres by 4.8 metres (with an additional 2 metre open canopy area to the front) and is 2.9 metres in height to the ridge.
- 1.3 As far as we are aware, the uses and operational development outlined above do not constitute a contravention of any of the requirements of any enforcement notice, or breach of condition notice currently in force and there has been no positive deception or concealment. Under these circumstances, no enforcement action may take place where a breach of planning control involving the making of a material change of use has subsisted for a period of 10 years and no action may be taken where a breach involving operational development has subsisted for a period of 4 years or more.
- 1.4 The burden of proof in an application for a Certificate of Lawfulness is on the applicant and the standard of proof that needs to be discharged is the balance of probabilities. It is not necessary for the applicant's own evidence to be corroborated for it to be accepted and the planning merits do not fall to be considered.
- 1.5 The application is accompanied by a Statutory Declarations and supporting evidence regarding certain matters of fact from Mr Robert Beaumont (owner and resident of The Oaks).

- 1.6 Should the Local Planning Authority have any reason to doubt the supporting evidence or require additional information then the applicant would welcome notice of this prior to determining the application and will seek to address those matters either through further clarification and/or else through the submission of additional evidence.

2.0 LEGISLATIVE BACKGROUND

2.1 Anyone can apply to the local planning authority to obtain a decision as to whether an existing use or development, or a proposed use or development, is lawful for planning purposes. If the local planning authority is satisfied that the appropriate legal tests have been met then it should grant a lawful development certificate. The key statutory framework for such applications and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 (T&CPA).

2.2 In accordance with the provisions of Section 191 of the T&CPA, if any person wishes to ascertain whether:

- a. Any existing use of buildings or other land is lawful;
- b. Any operations which are being carried out in, on, over, or under land are lawful; or
- c.

he may make an application (for a Certificate of Lawfulness) for the purpose to the Local Planning Authority specifying the land and describing the use, operations or other matter. Furthermore, Section 191 also states that uses and operations are lawful at any time if;

(a) No enforcement action may 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.

2.3 Section 171B(1) of the T&CPA states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Section 171B(3) provides that no enforcement action may be taken after ten years from the date of any other breach of planning control (which includes a material change of use).

2.4 Section 191(4) of the T&CPA states that if the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use or other matter described in the application, (or such description as modified or substituted by the local planning authority), then they shall issue a Certificate to that effect. Section 191(6) states that the lawfulness of any use, operations or other matter for which a Certificate of Lawfulness is in force shall be conclusively presumed.

- 2.5 Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the content of an application and how it must be submitted. The application must be accompanied by sufficient factual information/evidence for a Local Planning Authority to decide the application, along with the relevant application fee.
- 2.6 An application needs to describe precisely what it is that is being applied for and the land to which it relates. Planning merits and development plan policies are not relevant to an application for a Certificate of Lawfulness and a final decision rests on the facts of the case, relevant planning law and judicial authority.
- 2.7 The burden of proof is with the applicant and the appropriate test of the evidence is the "balance of probability" not the stricter burden of "beyond reasonable doubt". The applicant's case should be accepted if there is no evidence to contradict or otherwise make his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous. If the Local Planning Authority has no evidence itself, nor from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application,- provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 2.8 We understand that at the time of this application, the uses and other development referred to does not constitute a contravention of any of the requirements of any Enforcement Notice presently in force.

3.0 ASSESSMENT

- 3.1 The main issue in this case is whether the applicant can prove, on the balance of probability, that the Certificate that has been applied for should be awarded.
- 3.2 The burden of proof lies with the applicant although case law has established that the evidence of the applicant should not be rejected simply because it is not corroborated. In this instance, Mr Robert Beaumont's sworn Statutory Declaration confirms how the land has been used has been used as garden and how long the machinery store and summer house have been erected on the site.
- 3.3 The evidence in relation to the use/operation development of various buildings on the site are considered in more detail below:

Use of Land as Residential Garden

- 3.4 This application seeks confirmation that the use of the site as a domestic garden has been ongoing for over ten years and is therefore lawful. The land in question is identified in blue on plan JJM1.
- 3.5 The application is accompanied by a sworn statement from the applicant, who has lived at The Orchard since July 2011. The statement confirms that the site was first used as an extension of the domestic garden in October 2011 and has been ever since.
- 3.6 This evidence is corroborated to a large extent by aerial imagery which is provided in Appendix 1 of this statement. The September 2011 aerial photograph does not show the land fenced off and being used as residential garden. This is to be expected as the works were not carried out until October 2011. The next available aerial photograph is from 2015 and shows the land now enclosed by fencing with domestic paraphernalia including goalposts, walkways, seating and planting. It is clear from all the aerial photograph images that the site was being mown and it has a distinctly different character and appearance to the surrounding agricultural land. A snap shot of these features and characteristics of the site can be seen from the photographs provided within Appendix 2.
- 3.7 The submitted evidence confirms that on the balance of probability, the land has been in use as residential garden for a period in excess of 10 years before the date of this application and no enforcement action may now be taken. It is now lawful due to the passage of time.

Erection of Machinery Shed

- 3.8 The machinery store was carried out and substantially completed more than of 4 years ago. The building is identified a 'C' on plan JJM1 and is shown in the photograph below:



- 3.9 The machinery shed was completed in April 2019 and is shown on the aerial photograph in 2020, 2021 and 2022 (provided in Appendix 1). The Statutory Declaration of Mr Robert Beaumont confirms that the structure was completed in April 2019. The submitted evidence confirms that on the balance of probability, the machinery shed was constructed more than 4 years before the date of this application and no enforcement action may now be taken. It is now lawful due to the passage of time.

Erection of Summer House

- 3.10 The summer house was carried out and substantially completed more than of 4 years ago. The building is identified a 'D' on plan JJM1 and is shown in the photographs below:



- 3.11 The summer house was completed in April 2015 and is shown on the aerial photograph in 2015, 2016, 2018, 2020, 2021 and 2022 (provided in Appendix 1). The Statutory Declaration of Mr Robert Beaumont confirms that the structure was completed in April 2015. The submitted evidence confirms that on the balance of probability, the summer house was constructed more than 4 years before the date of this application and no enforcement action may now be taken. It is now lawful due to the passage of time.

4.0 CONCLUSION

- 4.1 Evidence accompanying this application clearly indicates that land has been used as residential garden at least the last 10 years. Additionally, the evidence is clear that the machinery store and summer house were erected on the site more than 4 years ago.
- 4.2 The provisions of Section 171B of the T&CPA 1990 (As Amended) state that under these circumstances, no enforcement action may now be taken. The planning merits of the development are not relevant at any stage in the assessment as to whether the use is lawful or whether to issue a Certificate of Lawfulness.
- 4.3 Furthermore, in accordance with Section 191(2) of the T&CPA 1990 (As Amended) the development described in this application is now lawful as no enforcement action may be taken because the time for enforcement action has expired and it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice in force.
- 4.4 On the balance of probability, the evidence submitted is sufficiently precise and unambiguous to demonstrate that a Certificate of Lawfulness should be awarded. Nonetheless, we would be grateful if the Council would notify us should it consider that there are any shortcomings in the evidence so that we can consider the submission of additional evidence.
- 4.5 In conclusion, a Certificate of Lawfulness should be issued in the terms set out in the application.

Appendix 1 Aerial photographs

2011 (September)



2015 (April)



2016 (April)



2018 (April)



2020 (April)



2021 (April)



2022 (February)



Appendix 2 Photographs of the site – June 2022











