

Delegated Report

Planning Ref: 26/00231/CLE

Applicant: Mr David Lock

Ward: Burbage St Catherines & Lash Hill



**Hinckley & Bosworth
Borough Council**

Site: The Oaks Sapcote Road Burbage

Proposal: Certificate of existing lawful development relating to the use of an outbuilding as ancillary accommodation such as a garden room, gym and recreational space

Case Officer(s): Zahra Jam-Rotbeh (Planning Officer)

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 building in question has been used as an outbuilding as an ancillary accommodation such as a garden room, gym and recreational space and that the development of the outbuilding would not require planning permission.

3. Description of the site and surrounding area

- 3.1 The application site comprises a residential dwellinghouse with a rear garden. Within the garden curtilage is a detached single-storey glazed outbuilding. The structure is located entirely within the residential curtilage of the property and is clearly subordinate in scale and function to the main dwelling.

4. Relevant planning history

13/00555/OUT

- Demolition of existing dwelling and the erection of one new dwelling (outline)
- APPRET
- 04.09.2013

14/01248/FUL

- Demolition of existing bungalow and erection of new dwelling
- PER
- 04.03.2015

22/00626/CLP

- Proposed single storey pool building
- CERTPU
- 01.09.2022

26/00174/HOU

- Erection of timber car port

- PDE

5. Publicity

- 5.1. The application is for a Certificate of Lawful Existing Use therefore no publicity is necessary.

6. Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary. However, the Local Planning Authority has consulted with Burbage Parish Council and they had no objection to this application.

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

The main consideration for the determination of this existing development is whether the development falls within permitted development rights as set out under The Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) Schedule 2, Part 1, Class E.

Please note Class E covers the provision within the curtilage of the dwellinghouse of—

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.

For the purpose of Class E, the following criteria are applicable:

Development is not permitted if:-

- a. permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class **[F1G,] M, [F2MA,] N, P [F3, PA]** or Q of Part 3 of this Schedule (changes of use);

Permission to use the dwellinghouse as a dwellinghouse has not been granted by Class M, N, P or Q of Part 3 of this Schedule.

- b. the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

The total area of ground covered by buildings within the curtilage would not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

- c. any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

The existing outbuilding would not be suited on land forward of a wall forming the principal elevation of the original dwellinghouse.

- d. The building would have more than a single storey;

The outbuilding doesn't have more than single storey.

- e. the height of the building, enclosure or container would exceed—

(i) 4 metres in the case of a building with a dual-pitched roof,

(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or

(iii) 3 metres in any other case;

The outbuilding has a flat roof and which does not exceed 3 metres and is not within 2m of the boundary of the curtilage.

- f. the height of the eaves of the building would exceed 2.5 metres;

The height of the eaves of the building wouldn't exceed 2.5 metres.

- g. the building, enclosure, pool or container would be situated within the curtilage of a listed building;

The outbuilding is not sited in a listed building.

- h. it would include the construction or provision of a verandah, balcony or raised platform;

The existing development does not include any of above.

- i. it relates to a dwelling or a microwave antenna;

Not Applicable.

- j. the capacity of the container would exceed 3,500 litres;

Not Applicable

- k. the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

Not applicable

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, the rear detached glazed outbuilding has been in continuous use incidental to the enjoyment of the dwellinghouse since May 2023. The use does not constitute development requiring an application for planning permission. The structure does not function as an independent planning unit and was permitted development under the relevant provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 10.2 Therefore there is no 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.**