

Case Officer: George Smith

Recommendation: Grant

Applicant: Mr Thomas Woolhouse

Proposal: Certificate of Lawfulness of Existing Use for the use of the site as residential dwellinghouse (Class C3) and associated residential garden

Expiry Date: 31 December 2019

Extension of Time:

1. APPLICATION SITE AND LOCALITY

1.1. The application relates to a large detached dwelling, of natural stone and slate roof, sitting on the edge of the village of Burdrop. There are residential properties to the north, west and south with open countryside to east. Also adjacent to the north is Sibford Surgery. The site is accessed off a narrow village street with hardstanding and a double garage providing off-street parking.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

2.1. The applicant seeks a certificate of lawfulness for existing use, on the basis that land to the rear of Nicholas Corner has been utilised for residential purposes for a period of at least 10 years and therefore that the use of the land to the rear of the property for residential purposes is lawful because it is immune from enforcement action.

2.2. The application description has been amended, with the applicant's agreement, to refer to residential garden (a use of land) rather than curtilage (a legal definition) – a certificate can only be issued on the basis of the former not the latter.

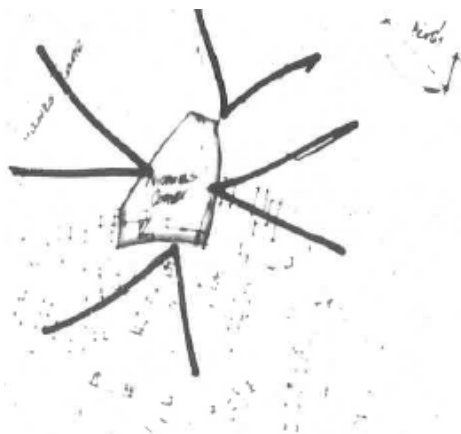
3. RELEVANT PLANNING HISTORY

3.1. The dwelling appears to date from prior to 1948, with no planning history to show when the dwelling constructed. As such, there has never been a 'defined garden' in planning terms.

3.2. The following planning history is considered relevant to the current proposal:

3.3. CHN.59/88 – Creation of a self-contained "granny annexe in part of the first floor of the north wing of the house, including new external staircase. Application Refused: 27th April 1988

3.4. Whilst the above application was refused, the submitted site area for the residential dwelling included the land that is subject of this application (see below).



4. PRE-APPLICATION DISCUSSIONS

4.1. No pre-application discussions have taken place with regard to this proposal.

5. RESPONSE TO PUBLICITY

5.1. This application has been publicised by way of a site notice displayed near the site and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **5 December 2019**, although comments received after this date and before finalising this report have also been taken into account.

5.2. No comments have been raised by third parties.

6. RESPONSE TO CONSULTATION

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. SIBFORD GOWER PARISH COUNCIL: **Comments** – *“Given that this information has already been determined through Planning Application 16/01576/CLUE, dated 19th October 2016, we are both surprised and curious that further clarification is being sought through the current application.”*

OTHER CONSULTEES

6.3. CDC LEGAL SERVICES: **Comments** – *“Curtilage is usually defined as a small courtyard, garth or piece of ground attached to a dwellinghouse and forming one enclosure with it (see attached). I have dealt with a number of cases where a house is sat in grounds, all in one ownership, and even with no delineation (The McAlpine case was one of mine) but the curtilage stops way short of the ownership boundary. However, the remaining land is clearly owned and occupied as an ancillary to the house and is probably one planning unit.... Whilst the stables might imply a larger curtilage, that's not a deciding factor and often stables are clearly outside the residential curtilage and indeed may well form an entirely different planning unit with a different use.”*

7. RELEVANT PLANNING POLICY AND GUIDANCE

7.1. Material Planning Considerations

- Section 191 of The Town and Country Planning Act 1990 (as amended)
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. APPRAISAL

8.1. The key issue for consideration in this case is whether or not the development is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

8.2. To demonstrate this, evidence must be submitted to show that the land has been used for residential purposes for a continuous period of ten years immediately prior

to the date of the submission of this application. This evidence must be clear and unambiguous.

- 8.3. Government guidance states that *'in the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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'*.

Applicant's evidence

- 8.4. The applicant has submitted a signed 'Statutory Declaration' and attached plan from the former owner of the property.

Officer assessment

- 8.5. Paragraph 4 of the submitted Statement states that the land within the fence enclosure had been tended to as part of "residential curtilage/garden". A curtilage cannot be 'defined' under planning law and use for garden is different to residential curtilage. The land in question is not residential curtilage and a certificate could not be issued on this basis, but it may be that the land has been used for residential garden.
- 8.6. The submitted Statement does state that the land has been used as a 'wood garden', used for sitting and drinking/eating. 'Wood garden' is a somewhat ambiguous use, but the statement also submits that the land has been used for residential purposes from between 2002 and 2017. The officer site visit evidenced that a bench is within the 'wood garden' area, with a gravelled path leading down from the dwelling to this area.
- 8.7. Officers have referred to the Cherwell District Council internal 'Planning Constraints' mapping, which shows a heavily wooded area and as such it is not possible to distinguish the use of this area of land from the aerial mapping.
- 8.8. Based on officer observations on site and the submitted Statutory Declaration, and in the absence of any evidence to the contrary, on the balance of probabilities the evidence demonstrates that the land has been used for residential garden for a period in excess of ten years. A lawful development certificate can therefore be granted.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. On the balance of probabilities, the Local Planning Authority is satisfied that the available evidence indicates that the land to the rear of the Nicholas Corner has been used for residential purposes for a continuous period in excess of ten years and would therefore be considered lawful.

10. RECOMMENDATION

First Schedule

Residential dwellinghouse (Class C3) and associated residential garden

Second Schedule

Nicholas Corner, Burdrop, OX15 5RQ

Third Schedule

On the balance of probabilities, the Local Planning Authority is satisfied from the available evidence, and without any available evidence to the contrary, that the land as identified in the Second Schedule and edged red on the plan attached to this Certificate has been used as described in the First Schedule for a continuous period of at least ten years prior to the date of the submission of the application, and as such is lawful.

Case Officer: George Smith

DATE: 20/12/2019

Checked By: Nathanael Stock

DATE: 20.12.2019
