



Delegated Report

Application No: 20210713

Location: Little Acres, Longfield Avenue, Gravesend, Longfield, Kent, DA3 7LA

Description: Application for Lawful Development Certificate in respect of the existing use of the site as a single unit within Use Class C3.

Applicant: Mr William Cook

Site Visit Date: Not required

Submitted Documents/Plans

The applicant has submitted the following in support of the application:

Application form received 2 June 2021;
Cover letter dated 1 May 2021 received 12 July 2021;
Drawing no. P_100 (Location Plan) received 23 September 2021;
Appendix B Statutory Declaration dated 2 September 2016 received 23 September 2021.
Drawing no. P_100 (Location Plan) received 13 October 2021.

Relevant Planning History

<u>Application No.</u>	<u>Description</u>	<u>Status</u>	<u>Decision</u>
20190003	Demolition of garage, outbuildings and removal of two mobile homes and the erection of detached chalet bungalow with associated car parking and garden and the use of existing stable block, sand school and paddock for equestrian purposes, including the enlargement of the paddock area and the formation of a new access from Longfield Avenue.	Permitted	06.04.2020
20160920	Application for a Lawful Development Certificate in respect of the continued use of land as domestic garden ancillary to the main dwelling.	Granted	24.04.2017
20140129	The change of use of land to the stationing of caravans for residential purposes for 4no. gypsy	Refused Appeal dismissed	11.04.2014 06.01.2016

pitches together with the formation of hardstanding and utility/dayrooms ancillary to that use.

20160942	Application for a Lawful Development Certificate in respect of the continued use of land and buildings for domestic purposes ancillary to the main dwelling.	Withdrawn	25.11.2016
20140051	Erection of a detached storage building at the rear.	Permitted	30.05.2014
20130552	Change of use from residential to mixed use as residential and breeding of horses.	Withdrawn	09.09.2014
20100810	Relocation and retention of the mobile home on a permanent basis as ancillary accommodation.	Temporary	16.03.2011
20100811	Retention of the six metal containers for storage of household and personal goods.	Refused Appeal allowed	21.02.2011 20.01.2012
20090299	Retention of two caravans	Temporary	16.06.2009
20080987	Application for the variation of condition 2 of planning permission ref. no. GR/20060896 relating to the erection of a detached bungalow with detached garage, to allow the continued use of the garage as a games room/leisure area.	Permitted	15.06.2009
20060896	Detached bungalow with detached garage and amenity space.	Permitted	13.11.2006
20060729	Erection of single storey detached dwelling with rooms in the roof space and detached double garage, store and shower room.	Refused	04.10.2006
20060509	Continued stationing of a caravan and a mobile home for a temporary period.	Temporary	08.08.2006
20060061	Demolition of the front bay window and the existing garage, erection of single storey western side and front extension to form enlarged living room and dining area; extension of the roof on eastern side and	Permitted	27.02.2006

erection of a detached building on eastern side to form double garage and store.

20031017	Demolition of the front bay window and the existing garage, erection of single storey extension on the western side elevation to form two bedrooms and two en-suite bathrooms and erection of a detached building on the eastern side to form double garage and stores.	Permitted	13.05.2004
20030457	Erection of single storey side and rear extensions to form a double garage, two storerooms, covered double car port and a kitchen/dining room/living room and erection of a front porch.	Refused	23.07.2003

Development Plan

As this is an application for a Lawful Development Certificate the matter is dealt with on the basis of an assessment of the available evidence; the issue of whether the use complies or not with the Development Plan does not apply in such circumstances.

The Law

The law relating to Lawful Development Certificates can be found in Sections 191 to 193 of the Town and Country Planning Act 1990 (as amended). For the purposes of this application the relevant section is 191, being a certificate sought for an existing use.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, the application has been advertised by individual neighbour letters to 25 properties. The consultation period expired on 3 November 2021.

One letter of representation has been received, with a complaint about noise, smells, anti-social behaviour, and the unfair set up of such businesses without the proper permissions and lack of consideration for the community.

The Local Ward Councillors were also consulted and no responses were received.

However, as this is a lawful development certificate application, any views expressed by third parties are irrelevant in the determination of the application.

Analysis

The application seeks to determine that the existing C3 use is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 171B (3) of the Town and Country Planning Act 1990 prescribes:

'In the case of any other breach of planning control, no enforcement action may be taken after the

end of the period of ten years beginning with the date of the breach’.

In order to determine this application for a Lawful Development Certificate and in accordance with S171B of the Town and Country Planning Act 1990 (as amended), it must be established whether or not the application site has been in C3 residential use for more than 10 consecutive years, i.e. prior to 2011.

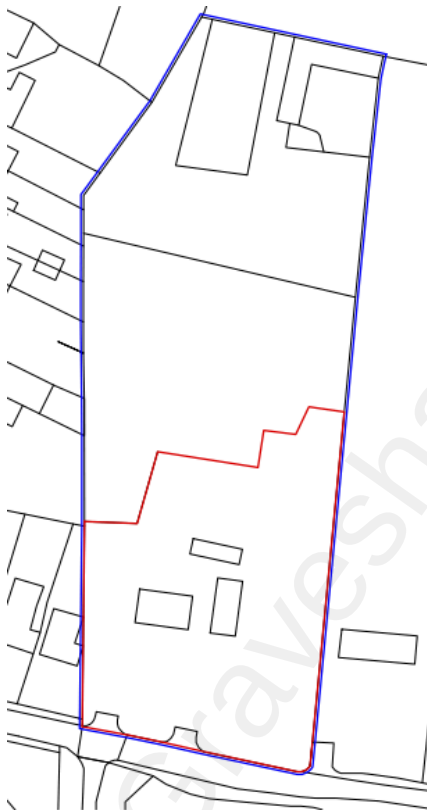
Para. 6 of the Government Guidance on Lawful Development Certificates states that:

‘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.’

Background

The extent of the residential curtilage was established in 2016 under application 20160920, which sought a Lawful Development Certificate for the existing use of the site as a domestic garden ancillary to the main dwelling. The extent of the curtilage was approved as follows:

20160920:



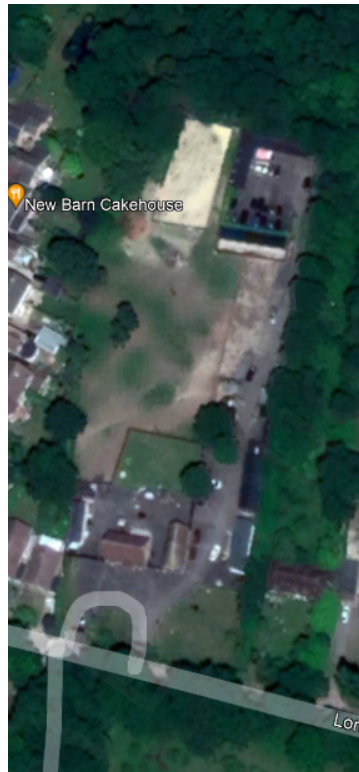
It is apparent from Google Earth images over time that the part of the site directly to the north of the dwelling is enclosed by a boundary and is well maintained in comparison with the remainder of the site beyond, and would appear to be the area used as private garden space. This married up with the site plan submitted and the residential curtilage approved under application 20160920.

Google Earth Images

2012:



2017:



2021:



Application 20160942 was submitted simultaneously alongside application 20160920, with the same supporting documents; this was subsequently withdrawn. The application site for the 20160942 application is the same as that submitted for the current application.

Definition of Curtilage

A number of court cases have cast some light on the meaning of 'curtilage'. In *Dancey & Co. v SoS & Lewes DC 1980* the basic premise that curtilage definition is essentially a matter of fact and degree was established. In *Methuen-Campbell v Walters 1979* a paddock attached to a garden was not considered to be within a curtilage as it was separated by a fence and not therefore intimately associated.

The *Methuen-Campbell* case was quoted in *James v SoS & Another 9/10/90* where a tennis court had been erected some 100m, distant from a house beyond an area of undergrowth and rough grass and a partial and indistinct line of trees and shrubs. It was held that an inspector had been correct in deciding that curtilages did not have precise limits and that each situation must be considered according to the facts of each particular case.

In *Attorney-General ex.rel. Sutcliffe, Rouse & Hughes v Calderdale BC 1983* the Court of Appeal accepted that three factors had to be taken into account in determining what constituted a curtilage: a) the physical layout of the building and structure, b) ownership past and present, and

c) use and function past and present.

The Court of Appeal case *Dyer v Dorset DC 1988* defined a curtilage as a small area forming part or parcel with the house or building which it contained to which it was attached. It was a matter of fact and degree. One of the appeal judges endorsed, as adequate for most present day purposes, the Oxford English Dictionary definition of curtilages. "A small court, yard, garth or piece of land attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law: the area attached to and containing a dwellinghouse and its outbuildings".

A further case was reviewed by the High Court in *McAlpine v SoS & Another 14/11/94*. Here the High Court identified three relevant characteristics of a curtilage. First, it was confined to a small area about a building; second, an intimate association with land which was undoubtedly within the curtilage was required; third, it was not necessary for there to be physical enclosure of that land which was within the curtilage but the land in question needed to be regarded in law as part of one enclosure with the house.

As is clearly stated by *Dyer* and *McAlpine* the following characteristics of curtilage are defined as:

- 1) Confined to a small area about a building;
- 2) Intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and
- 3) Physical enclosure is not necessary.

It is sometimes suggested that sheer distance from a dwelling is a criterion to be used in determining whether a land forms part of a curtilage. The argument is that the further from a dwelling that a large garden curtilage extends, the lesser must be its functional relationship. This view was articulated in the courts in *Collins v SoS 1989* where a summerhouse had been erected in the neglected part of the grounds of a large house. Here, the judgement was that this land was not part of the curtilage, as it did not serve the dwellinghouse. This argument was also advanced in *McAlpine v SoS 14/11/1994* where enforcement action was taken against a swimming pool, shed and tennis court. It was contended that the land (extending to 12 acres) fell within the curtilage of a dwellinghouse and was therefore permitted development but an inspector had decided otherwise on the basis of all the normal authorities. His view was that the garden land related to the house already extended to several acres, and that to contend that further extensive land should also be regarded as a curtilage did not fit with the concept of a curtilage being a small area, using *Dyer*. The judgement concluded that the inspector had correctly identified the tests for "curtilage" and was entitled to come to the conclusion that he had.

Taking the above case law into consideration, the residential curtilage cannot be considered to cover the entire plot, as the rearmost outbuildings are over 110 metres from the rear elevation of the dwelling, and it is alleged that outbuildings on the site are being used for activities not ancillary to the existing dwelling.

The existing residential garden under the approved 20160920 application extends to some 57 metres, which is around a third of the depth of the plot, and would meet the definition of a garden size when considering it against established case law.

Review of Submitted Evidence

As part of the supporting information for this current application, the applicant has submitted a Statutory Declaration (SD) dated 2 September 2016. This SD is exactly the same document that was submitted as part of the evidence relating to planning application 20160920.

Notably, on the site plan for the 20160920 application, the blue line around the site indicated the whole site ownership by the applicant, and the red line showed the extent of the domestic garden

or residential curtilage approved for the site. It was ultimately concluded under the evidence submitted for application 20160920 that the information contained in the submitted SD did not support the argument that the entire (blue) site was within the residential curtilage, which was the proposal sought under application 20160942. However, the information in the SD did match information on aerial photographs to show the residential curtilage being the same area as highlighted on the red line plan associated with the application, and the Lawful Development Certificate was granted on this basis.

In particular, in application 20160920, those parts of the SD that failed to demonstrate that the whole site makes up the residential curtilage (and which resulted in the withdrawal of application 20160942) included as follows:

Paragraph 8:

In approximately 2010 I erected 10 stables to the rear extent of my garden for use by my children and as a personal hobby to keep and drive welsh mountain ponies. As part of this, my daughters wanted to ride the ponies more often and therefore I constructed a circa 17m by 35m manège in approximately 2011. I identify this area as 'S1' and 'M1' at Exhibit WJC Document 2.

The 10 stables erected to the rear are outside the residential curtilage approved under 20160920, and it was clear from the neighbour comments received at the time that these were being used for commercial purposes and not ancillary to the existing dwelling. Further neighbour representations made under the current application continue to suggest the same.

Paragraph 12:

12. I can confirm that I have continuously used and maintained the land highlighted in blue at Exhibit WJC Document 1, as residential amenity land in connection with the main dwelling during my ownership. The site is one private dwelling property. More specifically, I have used different parts of the property to (i) park private vehicles, (ii) keep animals as pets connected to the main dwelling and (iii) erect buildings for internal storage and also outdoor storage. This is a non-exhaustive list.

This key statement was seriously doubted under application 20160920, given the commercial uses that appeared to have occurred to the rear of the site and the comments made by neighbours.

Paragraph 13:

Land immediately north of the dwelling has been mainly lawned and recently fenced for the younger children to play and not wander too far from the dwelling. However, previously this fence division between paddock and lawn did not exist or was in differing locations depending on the age of the children, the number of ponies onsite or the children's interaction between both areas. The current paddock area north of the lawned area has been used by my family for keeping their ponies, playing football and other games, and riding their push and motorised bikes. There is little to no difference between the use of both the immediate lawned area and paddock area at Little Acres. It was not my intention to separate uses by erecting a fence, but instead to keep my children/grandchildren and pets safe.

This statement supported the evidence from aerial photographs that the land immediately north of the dwelling had been used as the residential curtilage and the fencing had been erected in order that children could play safely adjacent to the dwelling. This would indicate that the land beyond the fence was not being used for residential purposes, which supported the view of the application that the curtilage was in line with the submitted site plan outlined in red.

Nothing has changed at the site to alter the position previously taken under application 20160920; indeed since 2016 there have been further breeches of planning at the site relating to unauthorised commercial activity that are currently subject to enforcement investigations. This evidence all casts doubt on the applicant's version of events.

The additional information submitted with the current application in the form of a covering letter includes a list of buildings on the site, and includes their sizes (ranging from 3.21m³ to 335m³) but there is no up to date site/block plan to show the precise location of each of these buildings, and the specific uses of each of these building is not described.

The covering letter goes on to set out further evidence to demonstrate the application relates to the site as falling within Use Class C3 over the last ten years. This evidence comprises extracts from the Planning Officer report relating to application 20190003, which assessed the merits of the erection of a detached chalet bungalow with associated car parking and garden, and the use of an existing stable block, sand school and paddock for equestrian purposes, including the enlargement of the paddock area and the formation of a new access.

The covering letter uses extracts from the report in the 'Planning History' section describing previous planning applications, and a statement in the report confirming 'the site can be classed as previously developed land', to prove the site comprises a single planning unit and can be classed as previously developed land. The covering letter goes on to state that:

Essentially, the Planning Officer did NOT conclude that only some elements or areas of the site fell within the definition of Previously Developed Land, but instead concluded that "the site", as a whole, comprised of Previously Developed Land and therefore Use Class C3.

This statement is pure conjecture on the part of the applicant; such a statement did not form part of any previous planning report relating to the site. Moreover, whether or not the site is previously developed land is not relevant to a Lawful Development Certificate application, and the application site's description as such does not have any bearing on whether the site the subject of this application is within Class C3 use or not.

Rather the onus is on the applicant to provide sufficiently precise and unambiguous evidence to prove on the balance of probability that, in this case, the site is within a Class C3 residential use, such that it would justify the grant of a certificate.

In this case, the evidence submitted, which consists of a previously disputed (in terms of the extent of the residential curtilage) Statutory Declaration from 5 years ago, together with planning history extracts from the Local Planning Authority's 2019 report relating to the assessment of a new dwelling on the site, is not considered to provide evidence beyond reasonable doubt that the whole extent of the site has been within Class C3 residential use for a period in excess of 10 years prior to the date of this application. This is further supported by neighbour representations and current planning enforcement investigations relating to ongoing commercial activities at the site.

Conclusion

By examining all the evidence submitted as part of this application, it is considered that when considered as a whole and on the balance of probability, there is insufficient evidence that the whole application site has been in continuous and sole Class C3 residential use since April 2011, and as such in excess of 10 years ago, and is therefore unlawful.

Recommendation:

Refuse Certificate of Lawfulness – Existing Development

See draft Decision.

Case Officer: Katherine Parkin	Team Leader: Faye Hobbs
Signed: K. Parkin	Signed: 
Dated: 17.11.2021	Dated: 18 November 2021