

Delegated Report

Certificate of Existing Lawful Use Application

Planning Application No: 20230780

Location: Knights Place Farm House Knights Place Farm Watling Street Cobham

Description: Application for an Existing Lawful Development Certificate in respect of continued use of land as garden for purposes incidental to the enjoyment of the dwellinghouse (C3).

Applicant: Mr M Lucas

Site Visit Date: Desktop

Submitted Documents/Plans

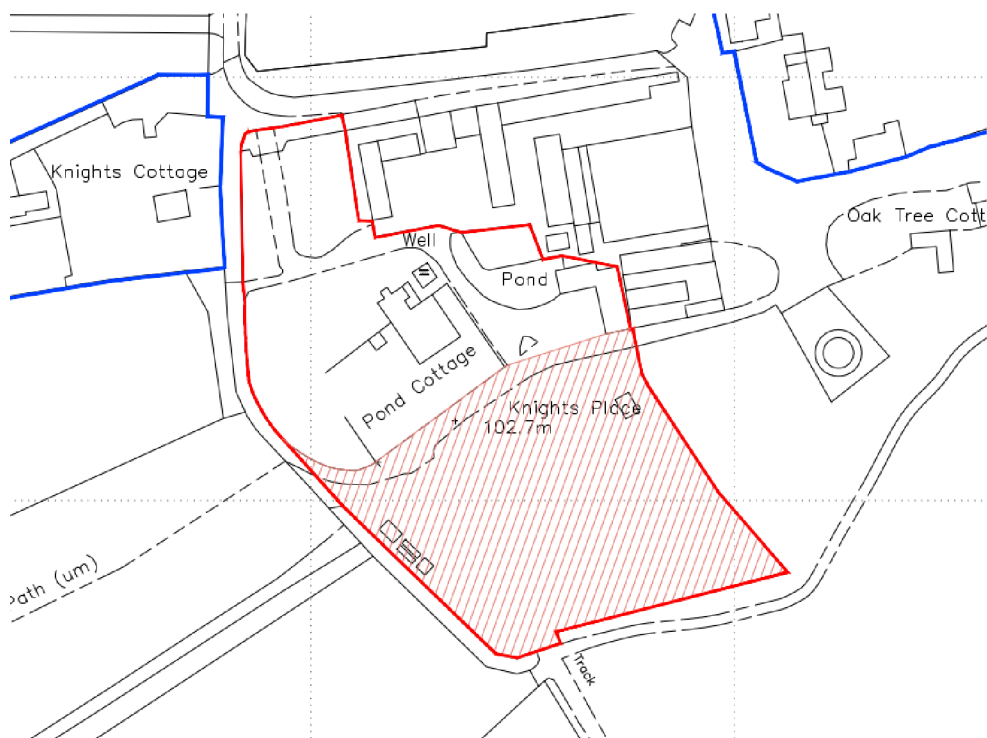
- Covering Letter;
- Application form;
- Drawing Register;
- Schedule of Application Documents;
- Drawing no. 21.7461/E102 – Site Plan;
- Drawing no. 21.7461/M004 – Location Plan; and
- Drawing no. 21.7461/P204 – Site Plan Showing Land Hatched Red;
- Planning Support Statement;
- Statutory Declaration of Witness A;
- Statutory Declaration of Witness B;
- Statutory Declaration of Witness C;
- Statutory Declaration of Witness D;
- Statutory Declaration of Witness E;
- Statutory Declaration of Witness F;
- Statutory Declaration of Witness G; and
- Witness Statement of Witness H.

Site Description

The application property is a 17th century detached building with outbuilding (triple garage, store and workshop with bedsit above) situated in Watling Street, Cobham. The building is grade II listed and located in the Green Belt, in an Area of Outstanding Natural Beauty and in the Ashenbank And Cobham Parkland Landscape Character Area.

It is land to the south of the dwelling that this application seeks an LDC for use of the land as garden for purposes incidental to the enjoyment of the dwellinghouse (C3).

This is shown in the below extract from the Site Plan showing the Land Hatched Red:



The site is also shown in the below Google Aerial Image:



Relevant Planning History

Reference	Description	Decision	Decision Date
20211547	Application for Lawful Development Certificate for proposed siting of a caravan for ancillary residential use.	Certificate Granted	31.03.2022
20100130	Erection of a conservatory in substitution of that previously permitted under planning permission	Permitted	14.05.2010

	reference number 20060639 and retention of related steps.		
20070628	Erection of detached building to provide a triple garage and store/workshop at ground floor level with a self contained bedsit in the roof space and erection of a detached triple car port beside it.	Permitted	04.09.2007
20060639	Erection of a conservatory at the rear and a detached double garage with triple car port and with a store in roof space over garage.	Permitted	04.10.2006
20060640	Application for Listed Building Consent for internal and external alterations in connection with converting two separate dwellings into one including erection of a conservatory at the rear and a detached double garage with triple car port and with a store in roof space above garage.	Permitted	04.10.2006
19860566	Application for Listed Building Consent for demolition of the porch on the southern elevation	Permitted	12.09.1986
19810982	Conversion of existing single family farmhouse into two dwellings and the provision of 4 parking spaces	Permitted	15.03.1982

Development Plan

Not applicable.

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Officer's Analysis

This application seeks a determination by the Local Planning Authority (LPA) as to whether the continued use of land as garden for purposes incidental to the enjoyment of the dwellinghouse Knights Place Farm House is immune from enforcement action due to the period of time over which it has been used as such and is therefore lawful. The relevant time limit for a change of use of land to gain immunity from enforcement action is ten years, as set out under s.171B (c) of the Town and Country Planning Act 1990.

Taking the application on face value, the key date in this case is whether the land has been continuously used as garden for purposes of incidental to the enjoyment of the dwellinghouse (C3) from a date of ten years prior to the current application being made, namely since 18/07/2013.

To confirm this use as lawful, the LPA would need to be satisfied that the land has genuinely been used as such over the requisite ten year period.

Procedure for determination

National planning guidance on determining applications for Lawful Development Certificates for existing uses or development is clear in stating that the onus is on the applicant to provide sufficient information to demonstrate that the use or development is lawful beyond any reasonable doubt.

Furthermore, in the case of applications for existing use, if an LPA 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.

Review of Evidence

In respect of the information submitted in support of the use of land as garden for purposes incidental to the enjoyment of the dwellinghouse these will be each be looked at in turn:

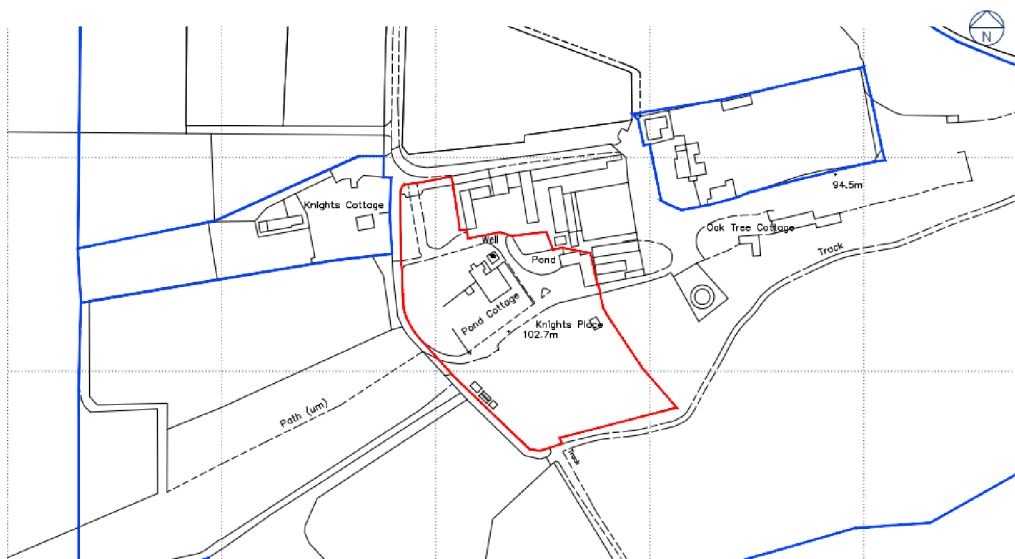
Application form

The form is dated 18/07/2023 and describes it is for an existing use which is continued use of land as garden for purposes incidental to the enjoyment of the dwellinghouse (C3). It states the grounds for the certificate being sought is that the use began more than 10 years before the date of this application and states the use started on 01/03/2007. It is stated that there has been no interruption in the use and that there has been no material change of use of the land since the start of the use for which the application is sought.

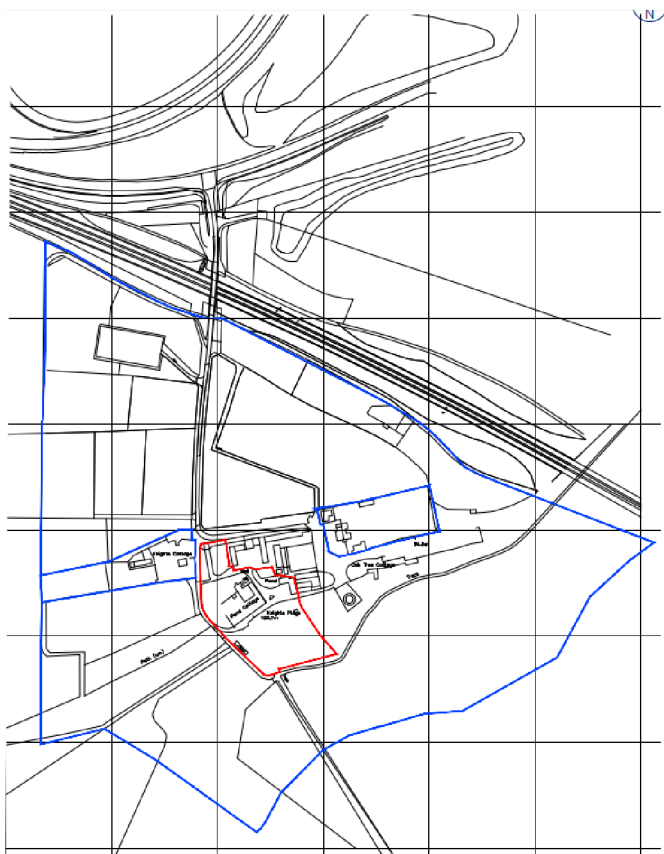
Comment: The form is clear and precise.

Drawing no. 21.7461/E102 – Site Plan, Drawing no. 21.7461/M004 – Location Plan; and Drawing no. 21.7461/P204 – Site Plan Showing Land Hatched Red

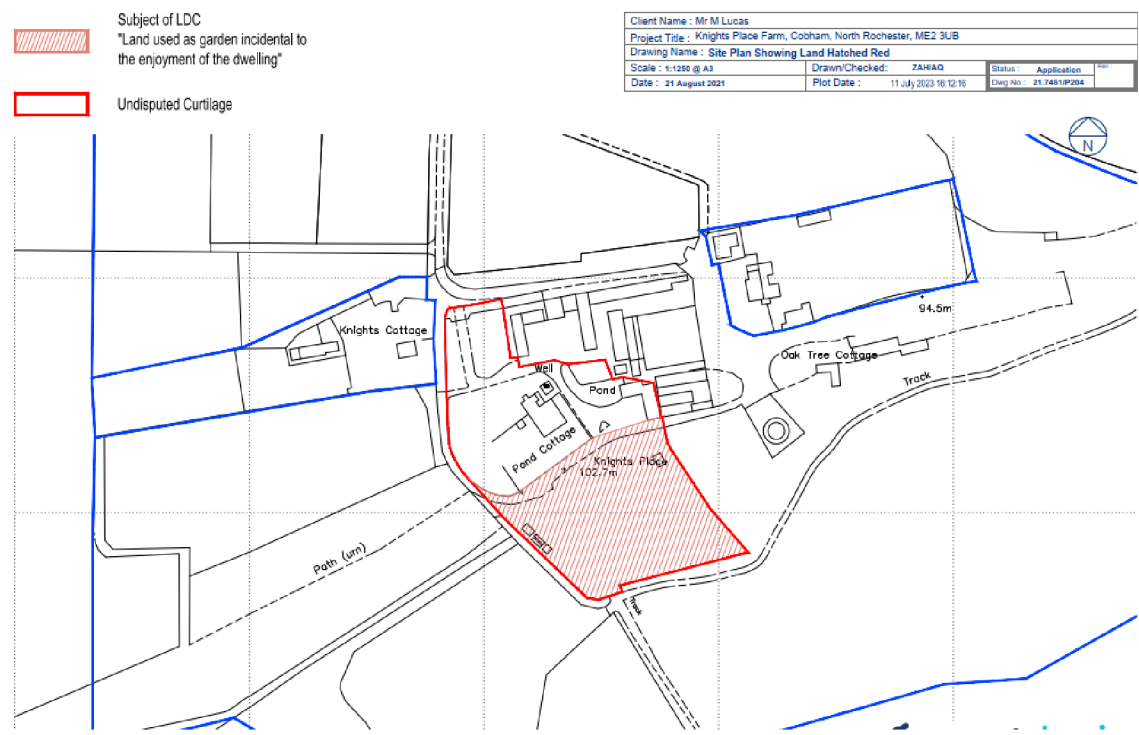
Drawing no. 21.7461/E102 – Site Plan shows the location of the application site outlined in red in the context of the surrounding area and includes other land owned by the applicant outlined in blue:



Drawing no. 21.7461/M004 – Location Plan shows the same information but with a wider view of the surrounding context:



Drawing no. 21.7461/P204 – Site Plan Showing Land Hatched Red shows the same but with a distinction of what is undisputed curtilage and the area that is subject of this LDC south of this:



Comment: The plans are clear and concise and clearly shows the application site and the distinction between what is the undisputed curtilage and the area subject of this LDC.

Planning Support Statement

This document states that it sets out the evidence which demonstrates that the land hatched in red on the site plan has been continually used as garden for purposes incidental to the enjoyment of Knights Place Farmhouse for over 10 years and as such has become lawful through the passage of time.

The document states that the Google Earth images provide clear evidence that the land hatched in red has been used as garden area incidental to the enjoyment of the host dwelling since at least 2007 although some work on the land had commenced before this year. In relation to the images they are described as follows in the statement:

Image stated to be no later than 01/01/2003 – The area hatched in red was rather overgrown scrubland and looked very different when compared to how it was developed and maintained in the following years as part of the gardens to Knights Place Farmhouse.

Image stated to be no later than 21/04/2007 - Scrub had been cleared with a few trees and shrubs remaining, lawn had been mowed, a post and rail fence installed to the west and southern boundary of the land hatched red and a hedge planted to the western boundary. A trampoline and goal post/stanchion can also be seen in this image.

Image stated to be no later than 09/07/2013 - A greenhouse, shed and raised vegetable beds had been developed towards the western boundary of the land hatched red. The lawn is closely mowed, the hedge planted by 2007 is mature and the trampoline and a dovecot to the south of the land can also be seen in this image.

Image stated to be no later than 02/07/2017 - A summerhouse had been erected to the eastern boundary and the lawn is closely mowed.

Image stated to be no later than 05/05/2018 – A steppingstone path had been added leading to the summerhouse and the lawn is closely mowed.

Image stated to be no later than 02/06/2020 - The land continued to be used as garden and in 2020, Mr Lucas's motorhome can be seen parked on the north of the land hatched red.

Image stated to be no later than 05/08/2022 - Shows the continued use as garden as it is today, the hedge is mature, the lawn is closely mowed and features described above such as the shed, greenhouse, summerhouse and dovecot can be identified.

Officer Comment – The information is clear and concise.

Two of the images are before the relevant 10 year period of between 18/07/2013 – 18/07/2023 but are of relevance to show what the site was like before this. In 2003 it can be seen that the land hatched in red is substantially covered by trees/shrubs and vegetation around all of the boundaries of the site and across the site. By 2007 however a fair amount of the shrubs have been removed, including all of those around the boundaries of the site and there are a few remaining trees/shrubs across the site. The land has been laid to lawn which can be seen to be mowed and fencing has clearly been erected along the western boundary. There is residential paraphernalia in the form of a trampoline and some other object which is not clear to identify (it is noted this is identified in the planning statement as a goalpost.)

By the 2013 image (which is now in the relevant 10 year period) image there is now established hedgerow along the western boundary and what appears to be fencing along the southern, eastern and part of the northern boundary. The land is still laid to lawn with the trampoline still there and also with the addition of two outbuildings alongside the western boundary and another structure in the south western corner (it is noted these are identified in the planning statement as a greenhouse, shed and dovecot respectively). There is also some sort of planting strip between the two outbuildings along the western boundary. By the 2017 image the site is the same as in the 2013 image but there is now also the addition of another

outbuilding along the eastern boundary (it is noted this is identified as a summerhouse in the planning statement). By the 2018 image the site is still the same as in the 2017 image but there is now a decorative stepping stone path which has been laid leading up to the summerhouse. By the 2020 image the site is still as it was in the 2018 image but is what now appears to be a picnic table and some other element next to it as well as a large vehicle parked on the land along the northern boundary. By the 2022 image the site is the same as the 2020 image (except the vehicle is not parked at that time).

In summary it is considered that the aerial photographs provide good evidence of the land at the application site hatched in red being used as a garden incidental to the enjoyment of the dwellinghouse (C3). There is a definite change of the land from being land covered with trees/shrubs across the site and around all the boundaries to most of this being removed and the land being laid to lawn and appearing freshly mowed throughout the relevant period. There is the change of all north, east, west and southern boundaries of the site being clearly marked out with fencing and or hedgerow. There are domestic features and paraphernalia that has been added to the site in the form of around four outbuildings, trampoline, picnic table, stone path and planting strip.

The Planning Support Statement also summarises the Statutory Declarations and the Witness Statement which have been provided and these will be looked at next.

Statutory Declarations and Witness Statement

These are summarised and commented upon individually in the following sections:

Statutory Declaration of Witness A

Witness A is the applicant and states that he purchased Knights Place Farmhouse on 15 September 2003 and moved in within the immediate following months and still lives there today. Witness A states that he commenced works on the Farmhouse and its gardens in the Autumn of 2003 and this included clearance work on the land edged in red. He states in 2003 this was scrubland and overgrown with bushes and scrub and that the land was cleared and by 2007 he had erected post and rail fencing to the western and southern boundaries of the land hatched in red. He states he also planted sapling hedging plants to the western boundary. Witness A states all these features can be seen in the 2007 aerial image as well as a trampoline, football goal post and stanchion. Witness A states that the hedging to the western boundary that he describes can be seen in the 2011 aerial image matured and also the trampoline is still evident as well as a dovecot. Witness A states that by 9 July 2013 he had erected a greenhouse and shed and developed some vegetable planters which are evident in July 2013 aerial image and the dovecot, trampoline and maturing hedging to the western boundary are still shown. By 2017 Witness A states that he had erected a summerhouse to the eastern side of the land hatched in red which can be seen as a dark red structure in the 2017 aerial image. Witness A states that the greenhouse, shed, vegetable planters, summerhouse with steppingstone path and dovecot are all evident in the 2018 aerial image. Witness A states that he sometimes parks his motorhome on the land hatched in red on the site plan and this can be seen in the 2020 aerial image. Witness A notes that the image also shows the dovecot has been relocated and the reason for this being that it had got knocked over whilst the lawn was being mowed so he wanted to re-site it. Witness A states how all of the features already described are shown in the most recent aerial image from 2022 including the hedging, fencing, greenhouse, shed, vegetable planters, dovecot, summerhouse and path and this is how it remains today.

Witness A states that he and his family have used the area hatched in red on the site plan as part of their gardens since they have moved into the property. Witness A's wife grows her vegetables and uses the greenhouse and vegetable planters erected by 2013 for growing plants and uses the shed also erected by 2013 for the storage of gardening equipment. He states how their children have played in the garden area hatched in red on the site plan since moving into the Farmhouse and more recently their grandchild. Also how over the years the family have held parties and games and sat out in the garden area hatched in red on the site plan. Witness A states how the garden area has been maintained by a number of gardeners over the years since including his principal gardener Witness E. He states he and his wife have carried out the gardening maintenance of the land.

Witness A provides 6 photos in his declaration which he states show the area of land hatched in red being used by his family from 2013 to 2022 with many of the features described in in declaration being evident. A photograph said to be from 8 December 2013 shows a car and what is said to be the applicant's dog in the foreground with the dovecot and garden benches visible in the background. A photo said to be taken on 23 August 2014 shows the greenhouse, hedgerow and vegetable planter in the background. A photo said to be from 9 March 2017 shows the summerhouse and dovecot in the background. A photo said to be taken on 14 September 2019 shows a tent in the foreground with the greenhouse, shed and hedgerow in the background. A photo said to be taken on 1 March 2021 shows a person who is said to the applicant's wife mowing the lawn on the sit on mower and a photo said to be taken on 15 October 2022 shows the trampoline.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to Witness A's own use of the site as the owner of the property and is sworn and therefore carries significant weight. Witness A's description of dates and features that were erected on the site corresponds with the aerial imagery. Witness A also provides photographs to demonstrate the features that are being described. The photos show the features that Witness A describes as being on the site by certain times and correspond with the aerial imagery. Although it is stated when each photo was taken, each photo itself is undated, however, the declaration is sworn.

Statutory Declaration of Witness B

Witness B states that he is a neighbour to Knights Place Farmhouse and that he moved into his property in 2007. He states that in all this time, Witness A have used their whole garden including the land hatched red on the site plan. Witness B states that he sees Witness A's wife regularly mowing the grass on a blue tractor, attending her vegetable patch and green house and the children playing on the land including the land hatched in red on the site plan and has seen this regularly since 2007.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has observed themselves what they are stating and is sworn and therefore carries significant weight.

Statutory Declaration of Witness C

Witness C states that he is a neighbour to Knights Place Farmhouse and that he moved into his property in 2003 and that Witness A moved into Knights Place Farmhouse around 2003-2004. Witness C states that Witness A planted hedges and fenced the area in question as shown hatched in red on the site plan where the dovecot is and he has been maintaining and using it as his garden ever since.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has observed themselves what they are stating and is sworn and therefore carries significant weight.

Statutory Declaration of Witness D

Witness D states that he has been Witness A's Accountant since 1997 and that he has visited Witness A at Knights Place Farmhouse every year since he moved in around 2004. Witness D states that he has had frequent and regular meetings and been in the garden at Knights Place Farmhouse since 2004 and that the garden encompasses the whole area where it is fenced and hedged including the area hatched in red on the site plan. He reiterates that it has certainly been used as private garden in that time. Witness D describes how during his regular visits since 2004 he has seen in the garden which includes the area hatched in red on the site plan the lawn being mowed, children playing in the garden, Witness A's wife attending her greenhouse and Witness A attending to his doves in the dove cot.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has observed themselves what they are stating and is

sworn and therefore carries significant weight.

Statutory Declaration of Witness E

Witness E has been Witness A's friend and gardener at Knights Place Farmhouse for over 15 years and during these years has visited the site regularly, usually on a weekly or monthly basis. Witness E states how he has tended the whole of the garden including the area hatched in red on the site plan, mowing, pruning, digging and planting etc. He confirms that the boundary at present with the post and rail fencing to the west and south of the area hatched in red on the site plan was in the same position when he started gardening at Knights Place Farm 15 years ago.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has observed themselves what they are stating and is sworn and therefore carries significant weight.

Statutory Declaration of Witness F

Witness F states that he first visited Witness A at Knights Place Farmhouse in 2005 as his Architect. He states he is the original architect on the project at Knights Place Farmhouse which started in 2005 and that he has visited Knights Place Farmhouse regularly and on occasion frequently weekly or monthly since 2005. Witness F also confirms that in the period of renovation and since at least 2007 Witness A fenced and hedged the land in questions and that it has been used as his private garden ever since. He states it has been mowed, attended to and used recreationally by the family.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has observed themselves what they are stating and is sworn and therefore carries significant weight.

Statutory Declaration of Witness G

Witness G states that he has been attending to Pest Control at Knights Place Farmhouse since 2008 and that he visits Knights Place Farmhouse and gardens 2 or 3 times a year and has done so since 2008. Witness G states that he can absolutely confirm that Witness A's garden includes the land opposite his house as hatched in red on the site plan and down to the post and rail fencing near the track.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has observed themselves what they are stating and is sworn and therefore carries significant weight.

Witness Statement of Witness H

Witness H states that he is the applicant Witness A's Planning Consultant and first visited Knights Place Farmhouse on 12 July 2013 and has visited various times since. He confirms that since he first visited the land edged in red subject of this application has formed and been used part of the domestic gardens incidental to the enjoyment of Knights Place Farmhouse for the Witness A. He recalls seeing all of the features as shown in the 2013 Google aerial image and as marked out in an annotated aerial plan included in his statement. He also makes reference to photographs that were taken on his first visit which are included in his statement. The photos show the boundary hedge and fencing, land laid to lawn with majority of trees/shrubs removed, the shed, the greenhouse, vegetable plot, the dovecot, trampoline, sit on lawnmower, a dog. Further photographs from what is said to be the 19 September 2013 have also been included. These again show the greenhouse, dovecot and fencing with land laid to lawn. Witness H advises he saw the area hatched in red being actively used as garden by the Witness A and his family.

Officer Comment: The information is clear and precise and within the relevant period. The information is first-hand, so far as it relates to an individual who has visited the site themselves from the relevant period and since then and is sworn and therefore carries significant weight. It is from someone who has visited

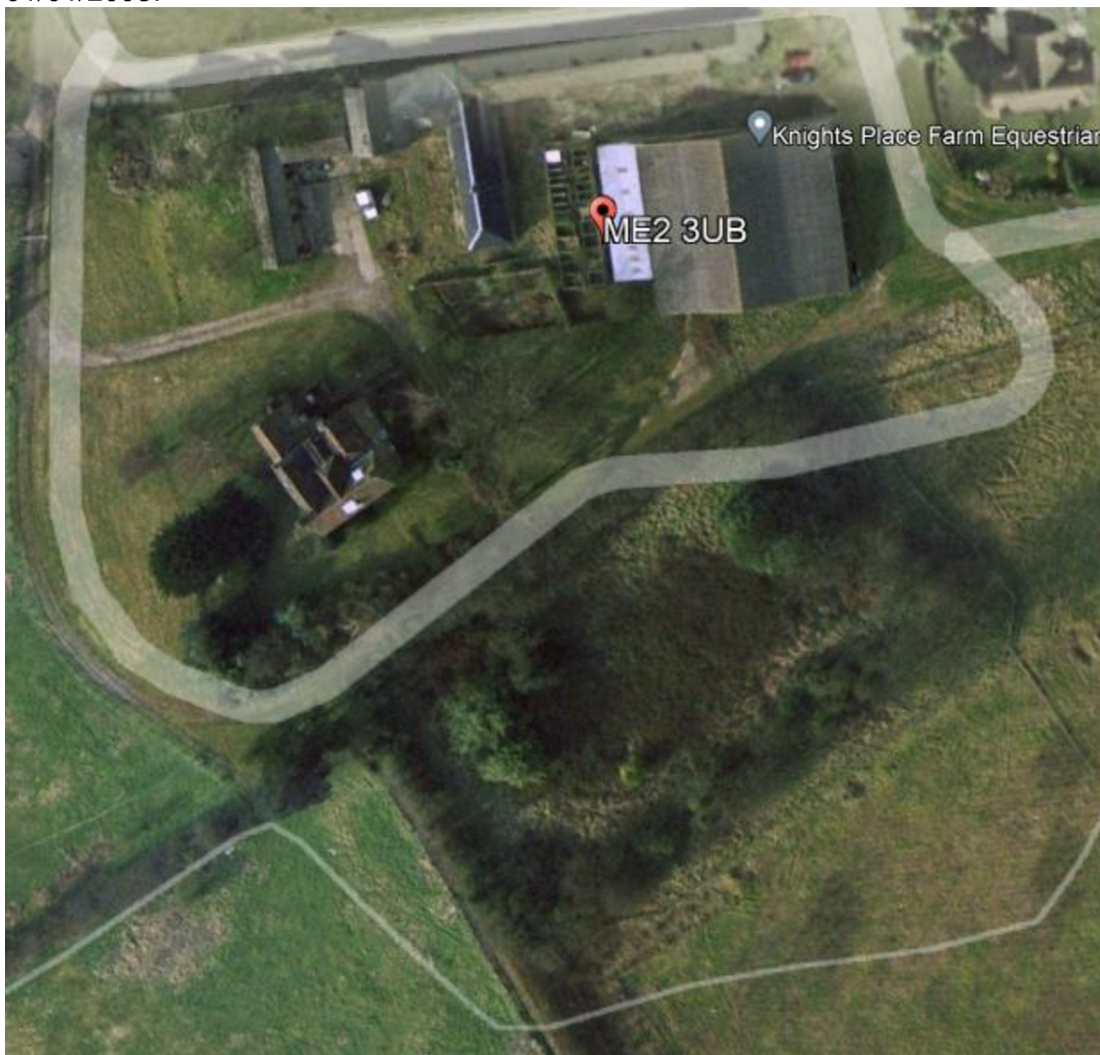
the site and provided photographs they took from July and September 2013 which is the first year of the relevant period. The photos said to be from July 2013 are undated but the statement is sworn. The photos from September 2013 are dated. The photographs correlate with the 2013 aerial imagery.

Evidence collected by the case officer

Google Earth Imagery – The applicant has provided a selection of Google Earth images in the Planning Support Statement - the years 2003, 2007, 2013, 2017, 2018, 2020 & 2022.

There are Google Earth images from other dates which have not been provided. All of the years have been looked at by the case officer and are provided below:

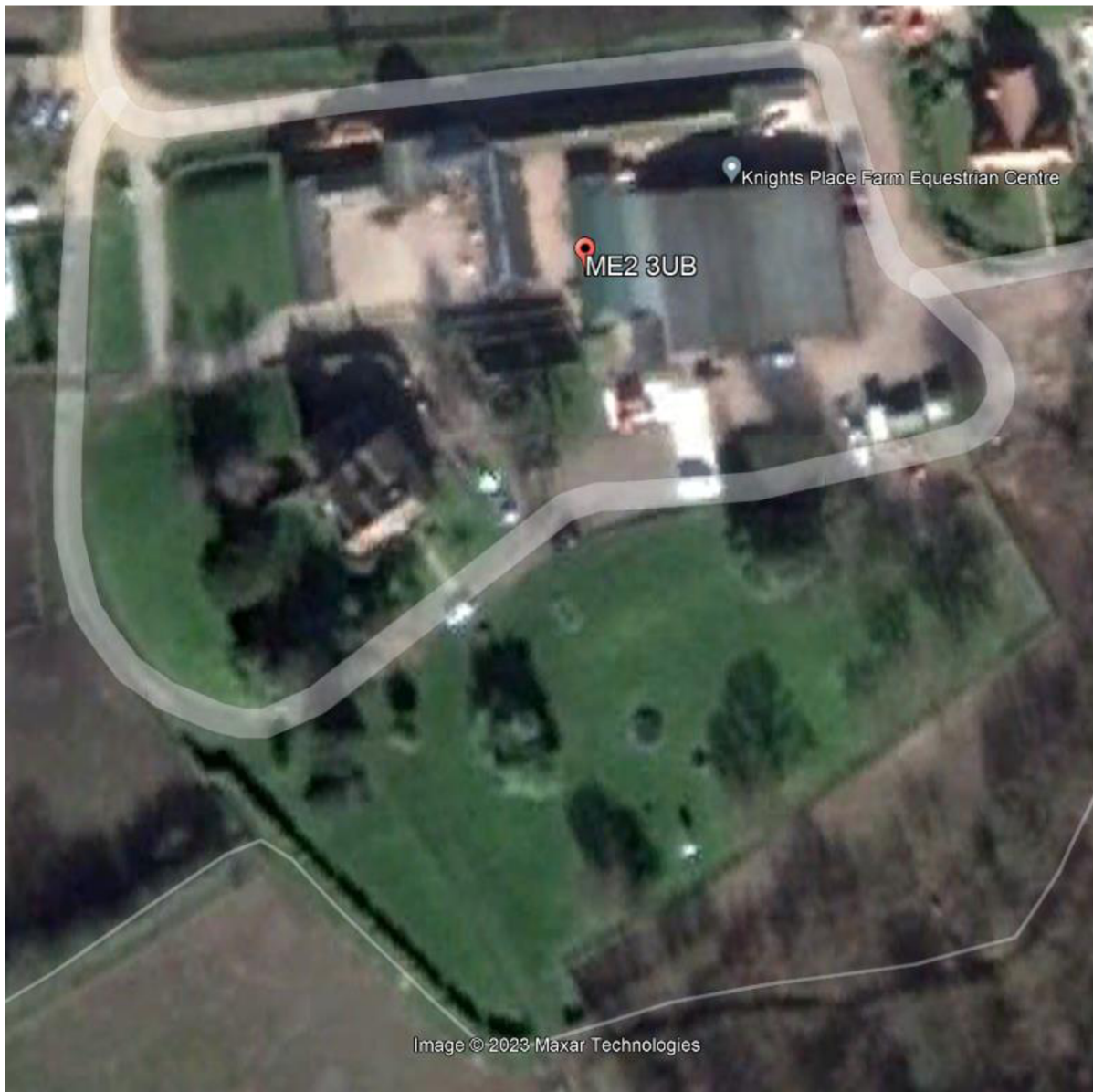
01/01/2003:



21/04/2007:



07/03/2011:

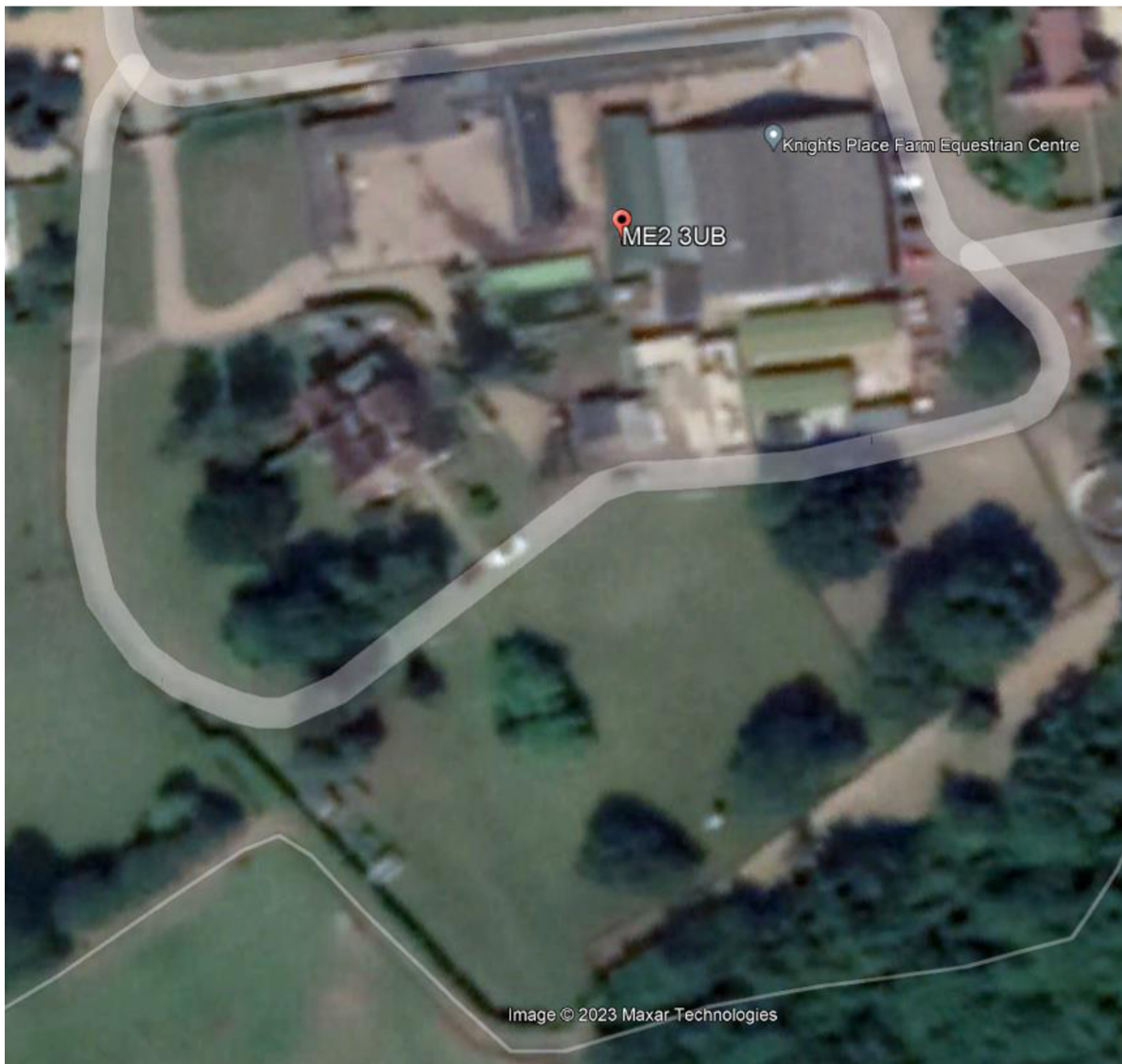




09/07/2013:



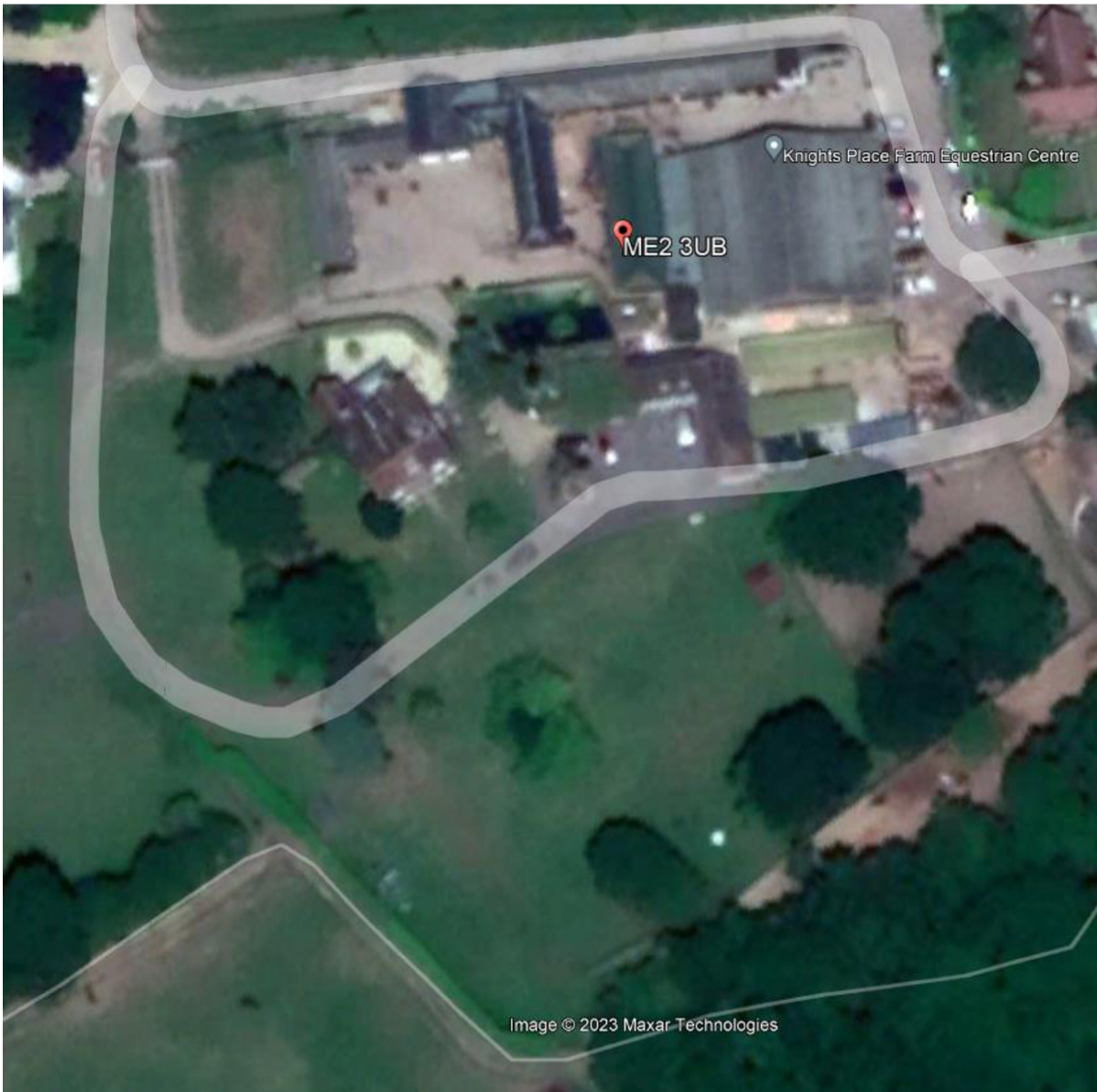
26/07/2014:



20/04/2015:



02/07/2017:



05/05/2018:

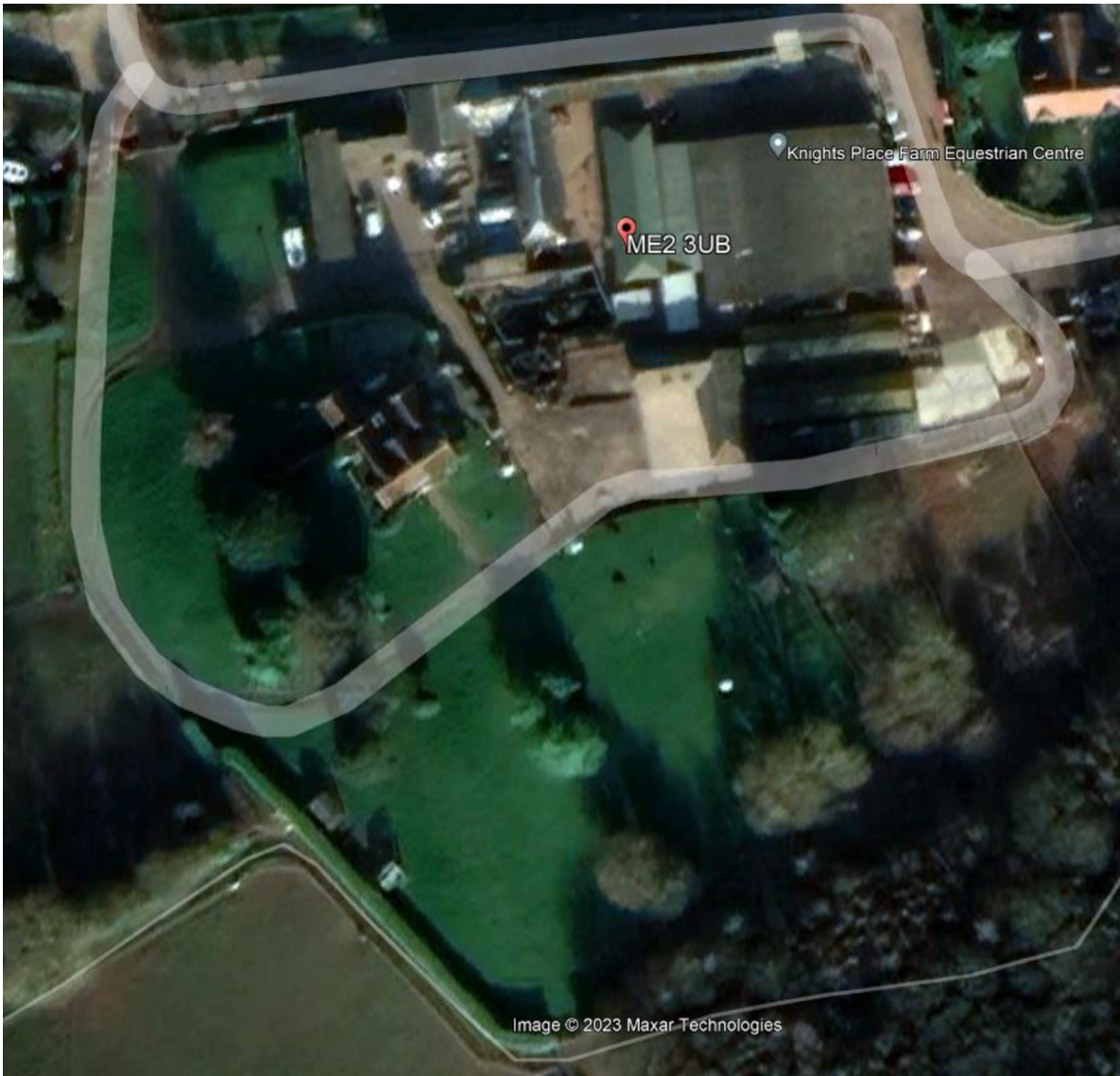


23/04/2020:



02/06/2020:





05/08/2022:



The aerial images show that in 2003 (before the relevant period) the land hatched in red was scrubland covered by many trees/shrubs and that by 2007 (still before the relevant 10 year period) the scrubland had been removed across the site and around all boundaries with only a few trees remaining and the land was now laid to lawn which can be seen to be freshly mowed with mow lines the same as the garden which directly surrounds Knights Place Farmhouse. There is also clearly by this point fencing to the west and also fencing to the south. There is a trampoline, goalpost and another feature which have been added to the land. By March 2011 fencing and established hedgerow can be seen on the western boundary and fencing along the southern and eastern boundaries. The trampoline is still there and also a couple of other features added which cannot be identified. By November 2011 the site is still the same.

By July 2013 (which is now in the relevant period) fencing along part of the northern boundary can now clearly be seen, the trampoline is still there and is now clearly evident and further features have been added to the land in the form of two structures which appears to be a shed and greenhouse with a planting strip between. There is also a further white feature which cannot be identified (said to be a dovecot in the supporting statement). By July 2014 the image appears the same. By April 2015 the site is still freshly mowed and has the same mow lines as the garden immediately surrounding Knights Place Farm. A further feature has been added to the end of the shed in what appears to be storage. All other features remain although the trampoline is no longer visible. By July 2017 a further outbuilding has now been added alongside the eastern boundary (said to be a summerhouse in the supporting statement). By May 2018 a

decorative stepping stone path to the summerhouse has been added and possibly a picnic table. By April 2020 some benches appear to have been added. In June 2020 image a large vehicle is parked on the edge of the land. By the January 2022 image and in the last aerial image available August 2022 the site appears the same as previously described.

Planning and Enforcement files

Any site photographs do not show the site hatched in red subject of this LDC so do not provide any information either way. Delegated reports, site notes, drawings etc also do not provide any information either way.

Overall Assessment

The statutory declarations and witness statement are sworn evidence. They are by a varied cross-section of people who have come to know Knights Place Farmhouse and its surroundings including the land hatched in red subject of this application well and would therefore be best placed to know how the land has been used; these include the applicant Mr Lucas himself. Also two neighbours who would know the site well by being the two closest neighbouring properties, both have been so since well before the relevant period and so would be likely to be well placed to have observed how the site has changed since that time. Also the gardener who he himself has mowed and tended to the garden of Knights Place Farmhouse which he states has included the land hatched in red since he started gardening there some 15 years ago and has observed the domestic features and paraphernalia which have been placed on the site since that time. These views are supported by others who in their role have visited the house including the area hatched in red regularly throughout the relevant period particularly the Planning Consultant who had taken site photographs in his first visits in 2013 which show the land hatched in red laid to lawn, the boundary fencing and hedging, the shed, the greenhouse, vegetable plot, the dovecot, trampoline and sit on lawnmower. A varied cross-section of people who have good knowledge and experience of the site on a regular basis (ranging from daily, monthly or yearly) and have visited in their various capacities all purport to have witnessed the garden being in continuous use for the relevant period if not longer (beginnings since at least 2007). The Council has no evidence to contradict the evidence given in the declarations and witness statement, they are sworn evidence and they are accordingly given due weight.

The aerial photography supports the applicant's view that the land hatched in red has been used as garden land for the relevant period. In comparing the images from January 2003 and July 2013 it is clear that land hatched in red had changed from an area of scrubland to a domestic garden being freshly mowed, fencing and hedging along the boundaries, shed, planting strip, greenhouse, dovecot, trampoline all being clearly present on the land. By 2017 further features such as a summerhouse which by 2018 has a decorative stepping stone path and also picnic table and benches etc. are present and this has continued to the present day.

The photographs supplied in the evidence of Witness A and Witness H correlate with the dated aerial imagery in what they show and in what the declarations and witness statement say. The aerial photos show the view from the ground which helps to provide a clearer image of features which it is not always clear to see what they are from above. Two of the images from Witness H have electronic dates on the photographs of 19 September 2013 and clearly show the land laid to lawn, the boundary hedging and fencing, the greenhouse and the dovecot. The other photos provided in Witness H and those in Witness A's evidence are undated but as stated the evidence is sworn. Those photos appear to have a patina of age and particularly in the case of Witness A's photos they are principally of a subject matter in the foreground such as a car, a family member or pet but they show the domestic features and paraphernalia in the background. In those photos they clearly show the shed, planting/vegetable patch, trampoline, summerhouse, sit on mower. The presence of these photographs which correlates with the aerial photos and the declarations and statements is also given due weight. Although photographs do not demonstrate continued use, the fact there are two dated photographs from September 2013 which show the land appearing in use as a garden in respect of the change of scrubland to a freshly mowed lawn and the presence of various domestic paraphernalia is considered to demonstrate a change in the land at the beginning of the relevant period i.e., July 2013. Although there are no dated photographs since then what

the other undated photos show is supported by the Google aerial images which is evidence that is regular and up to the present day and shows a consistent use which is also supported by what the declarations and witness statement say.

Conclusion

It is considered that the applicant has provided sufficient evidence that on the balance of probability, the application site has been continually used as garden for purposes incidental to the enjoyment of Knights Place Farmhouse in excess of ten years prior to the date of the application being made, namely since 18 July 2013.

The Borough Council has no evidence to cast doubt on the applicant's claim which could be sustained if the application was refused and appealed.

The Borough Council is therefore satisfied that the site has been used as garden for purposes incidental to the enjoyment of Knights Place Farmhouse and is exempt from enforcement action by reason of section 171B (3) of the Town and Country Planning Act 1990, as amended.

The development is therefore lawful by reason of section 191(2)(a) of the Town and Country Planning Act 1990, as amended and a Certificate of Existing Lawful Use is duly issued.

Recommendation: Grant Lawful Development Certificate

Case Officer:	Ms Rebecca Harrison	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	14th September 2023	Dated:	15 September 2023