

# Planning Statement

Site Address: Lower House Barn  
Lower House Farm  
Stoney Lane  
Alvechurch  
Worcestershire  
B60 1LY

Our Ref: 21/037

Client: Mr K Busby

Proposal: Lawful use of land as garden in connection with the property Lower House Barn

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## 1. INTRODUCTION

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- 1.1. MSC Planning Associates Ltd have been instructed to prepare and submit a Lawful Development Certificate (Existing Use) pursuant to S191 of the Town and Country Planning Act 1990 (as amended).
- 1.2. This certificate is being sought following legal searches that identify the land as being highway land (See **Appendix 1**) and that on the advice of David Maric (Worcestershire County Council Highways Department) a lawful use certificate should be sought to regularise the unauthorised use of land, prior to an application being made to 'Stop Up' the right of way under S.247 of the 1990 Act.
- 1.3. This statement sets out the details of the proposal and the evidence that underpins the application. The statement must be read in conjunction with all supplementary information, plans, technical reports and other documentation as submitted.

## 2. SITE & SURROUNDINGS

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- 2.1. The property is a former, traditional brick, under tile roof agricultural barn, which was converted into a residential dwelling (Lower Farm Barn) in the early 2000's following consent granted under application B/2001/1075.
- 2.2. The land the subject of this application comprises a small, narrow strip of garden situated between the property and current highway, separated by a low brick wall. See Google Earth Street view image below.



- 2.3. The property is grade II listed and located within the countryside washed over by Green Belt.

### 3. PLANNING HISTORY & BACKGROUND

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- 3.1. The only relevant history relates to the creation of this land following planning and listed building consent to convert the former barn into residential use granted under application B/2001/1075 and issued in October 2001.

### 4. LEGAL FRAMEWORK

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- 4.1. A Certificate of Lawfulness is not a test of planning policy and rests purely on matters of law and fact.

#### Definition of Development

- 4.2. The definition of development is –
- S55(1) - Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

#### Certificate of Lawful Development

- 4.3. Section 191 of the Town and Country Planning Act 1990 (as amended) provides a mechanism for any person who wishes to ascertain whether —

(a) any existing use of buildings or other land is lawful.

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

They may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) – For the purposes of this Act, uses and operations are lawful at any time if —

no enforcement action may then be taken in respect of them (whether because they did not involve the development or require planning permission or because the time for enforcement action has expired or for any other reason); and

they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) – For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

the time for taking enforcement action in respect of the failure has then expired, and

it does not constitute a contravention of any of the requirements of any enforcement notice or be a breach of condition notice then in force.

(4) – If, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning

authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

#### 4 or 10 Year immunity periods

- 4.4. There are two immunity time limits associated with when enforcement action as outlined under S171B, a 4yr rule and a 10year rule can/cannot be taken.
- 4.5. In this case, the matter relates to a material change of use so that the 10yr rule applies (171B (3)), which states:

*“(3) 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.”*

## 5. MATTERS TO WHICH A CERTIFICATE IS SOUGHT

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- 5.1. The submission outline (marked red) of this application is to establish the lawful use of garden land in connection with the property Lower Farm Barn.
- 5.2. In the absence of any evidence to the contrary, the documents submitted suffice to show well beyond the requisite standard of the balance of probability that, for a continuous period starting in 2002, the land as edged in red has been used as garden in connection with the property known as Red Barn for a period of 10+yrs throughout, without interference or cessation.

## 6. EVIDENCE

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- 6.1. The evidence in support of the Certificate is as follows:
  - Letter from the applicant confirming that since the property was converted in the early 2000's it has been used as garden in connection with Lower Farm Barn.
  - Google aerial photographs and Street view imagery from 2007 – 2021 showing the land clearly in use as garden associated with Lower Farm Barn.

## 7. CONCLUSION

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- 7.1. The Council will be aware that the legal test for Certificate of Lawful Development (Existing) is on the balance of probability and **not** the criminal burden of beyond reasonable doubt.
- 7.2. The evidence does not have to be corroborated nor verified, nor does it need to be in the form of an affidavit (the higher legal test) to be accepted so long as the events and evidence clearly and precisely give witness to the events.

- 7.3. Based on the submitted evidence, we believe that the use of land, as edged red on the plan, has been used as domestic garden for the preceding 10yrs continuously and uninterrupted.
- 7.4. In the absence of any other evidence, either submitted by third parties or by the Council to refute it, we conclude that such an application for Lawful use should be granted as per the requirements of Government guidance.