



bell cornwell

CHARTERED TOWN PLANNERS

01256 766673 | info@bell-cornwell.co.uk | bell-cornwell.co.uk

Planning Department
Basingstoke & Deane Borough Council
Civic Offices
London Road
Basingstoke
RG21 4AH

Our ref: 9726/RJ

23 June 2021

Dear Sir/Madam

Application for Lawful Certificate of Development – Section 191 Town and Country Planning Act (TCPA) 1990 – Hackwood Farm, Tunworth, Basingstoke, RG25 2LB

We act for the owner of the above property and enclose an application under s.191 of the TCPA 1990 (as substituted by the Planning and Compensation Act 1991, s.10 (1)), for a certificate of lawfulness for the use of land as residential garden.

The application is accompanied by the following:

- Statutory Declaration of Charles Henry Remnant – Current owner
- Statutory Declaration of Christopher Michael Aldous – Previous owner
- Plan No. 1: Site Plan – Showing site and garden areas, which are the subject of the application

The History of the Site & the Application

The site was purchased by the owner in 2009. The history of their ownership and use of the land is set out in their Statutory Declaration. A further Statutory Declaration is provided by the previous owner to corroborate the evidence of the current owner and to confirm the use of the land prior to 2009.

The owner has occupied the property continuously since September 2009, a period of over 11 years. The evidence submitted confirms that the West Garden has been used as residential garden since 1999, a period of over 21 years. The East Garden has been used as residential garden since January 2011, a period of over 10 years.

The application seeks a certificate of lawfulness confirming the lawful use of the East and West Gardens or Hackwood Farm, as identified on the Site Plan, as residential garden.

There is nothing in the planning history for the property that is relevant to the use of the land in question or to this application.



Statutory Framework

An application for a certificate of lawfulness of existing use can be made under s. 191 of the TCPA 1990 (as substituted by the Planning and Compensation Act 1991, s. 10(1)), which provides:

“(1) If any person wishes to ascertain whether –

- a) any existing use of buildings or other land is lawful; or
- 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,

he 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—

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

- a) the time for taking enforcement action in respect of the failure has then expired; and
- b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the local planning authority are 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.”

The PPG provides guidance on Lawful Development Certificates and notes that:

“In the case of applications for existing use (which applies in this situation), 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.” (Reference ID: 17c-006-20140306)

Indeed, if the activity in question is shown to be lawful, the Council has no discretion other than to grant the application: “they shall issue a certificate to that effect” (s. 191(4), the TCPA). The applicant is urged in the PPG, however, to “describe the proposal with sufficient clarity and precision to enable the Council to understand exactly what is involved in the proposal”.

Considerations

Applying the above and drawing on the facts provided in the Statutory Declarations, it is evident that when applying the above law, the use of the land as residential garden has become immune from enforcement action. The current and previous owners confirm in the Statutory Declarations that both the East and West Gardens have been used as residential garden for a period in excess of 10 years.



On this basis, we invite the Council to confirm that the use of the East and West Gardens as residential garden is lawful and accordingly grant the certificate which this application seeks.

We look forward to discussing the application with you in due course. If you have any questions, please do not hesitate to contact us.

Yours sincerely
BELL CORNWELL LLP



REBEKAH JUBB
Partner

