

2024/9900

Mr Roger South

Adam Laith Barn, Silkstone Lane, Silkstone, Barnsley, S75 4DX

Lawful development certificate for an existing use of land as domestic garden

Site Description

The application relates to an area of land to the rear of Adam Laith Barn located on Silkstone Lane, Silkstone. The land is partially screened from Silkstone Lane. The property is set within Green Belt with agricultural land to the rear and side. Permitted development rights have not been removed at the property. Previous land to the rear of this dwelling is also used as a garden area see the below planning history.

Planning History

B/88/1758/PR - Outline for conversion of barn into dwellinghouse (Historic)

B/91/1764/PR - Conversion of redundant barn to dwelling and erection of private garage/stable (Historic)

B/03/0028/PR - Erection of rear single storey extension to dwelling (Historic)

B/03/0385/PR - Erection of first floor side extension (Refused)

B/03/1876/PR - Formation of a wildlife pond (Historic)

B/04/0655/PR - Formation of vehicular access, erection of canopy to front door and siting of garden shed (Approved with Conditions)

2014/0305 - Erection of a single storey extension to dwelling (Approved with Conditions)

2021/1623 - Lawful development certificate for an existing use of land as domestic garden and wildlife pond (Lawful Development Certificate - Granted)

Proposed Development

This application is for a Section 191 Certificate of lawfulness of existing use or development. A certificate under this section can be sought if any person 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.

The applicant seeks confirmation of an existing use of land as a domestic garden on land which has been used as such in excess of 10 years. The land would form an extension to the existing garden area and is in the applicant's ownership. The land is separate to that previously found to have been used for over 10 years (2021/1623).

Policy Context

Section 191(1) of the Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any existing use or operations which have been carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority describing the use or operations in question.

Section 191(4) of the Town and Country Planning Act 1990 states that 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 shall refuse the application.

Guidance states that if a local planning authority has no evidence of its own, or 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 is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

This reflects the ministerial advice that was formerly printed in Annex 8 to Circular 10/97, at paragraph 8.15. 'Evidence' from neighbours, or others objecting to the application, consisting of no more than doubt, disbelief or scepticism regarding the evidence adduced by the applicant does not amount to evidence contradicting or otherwise making the applicant's evidence less than probable.

A full award of costs is liable to be made on appeal under Section 195 of the Town and Country Planning Act 1990 against a local planning authority which refuses a certificate of lawfulness in ignorance or defiance of the rule in *Gabbitts*.

Consultations

Cawthorne Parish Council were consulted and raised no objections.

The LPA's Legal team were consulted and raised no objections.

Representations

There is no statutory requirement for local planning authorities to consult third parties, including neighbouring residents or parish councils on a certificate of lawfulness application since such applications are a matter of fact and law and are not determined on their planning merits or judged against national or local planning policies or guidance. None the less neighbouring properties were consulted, and no comments were received.

Assessment

A local planning authority can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

The applicant has submitted this application for lawful use of the relevant area of land under Section 191 of the Town and Country Planning Act 1990. Section 191(1) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter.

Section 191(4) further provides that if, on the basis of the information provided in the application, the Council is satisfied at the time of the application of the use, and the LPA is obliged to issue a certificate to the effect that the use is lawful.

It should therefore be assessed whether the use of the land is lawful under the Town and Country Planning Act 1990. If the 10 years is established for the use the LPA would not be entitled to take enforcement action in respect of the breach and the existing use would thus be lawful.

As with all such applications the LPA are only concerned with the factual background in this case to establish that any existing use of buildings; or any operations that have been carried out in, on, over or under land, are lawful. If, on an application under this section, the LPA are provided with information satisfying them that the use or operations described in the application are lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Analysis of evidence for the use of the land as garden

The applicant has provided a signed declaration, signed by a solicitor, stating the In terms of the use of the land as a garden for 10 years, Section 191(4) says that the submitted evidence must satisfy the LPA that the use has been present for the requisite period. This means that the evidence supporting the application must be clear and unambiguous. The burden of proof rests with the applicant to demonstrate that all of this land has been used continuously for at least 10 years as domestic garden.

The applicant has provided a signed declaration, signed by a solicitor, alongside two photos of the site. In the signed declaration they reference the photos and state the following:

The area to the far side of the stone wall that used to be part of the field is now used partially as a field and partially as a pond. From my own knowledge I can therefore confirm that the area bounded by the stone walls has been used as a lawned area for the exclusive benefit of Adam Laithe Barn and for no other purpose whatsoever.

The submitted aerial photograph from 2002 shows the land in question as grassed and connected to the land use to the southeast which has been proven to be domestic garden. The land in question of this application also has the appearance of a lawned garden and is clearly separated from the adjacent farmland.

The 2009 aerial photograph further shows this with the presence of a pond on the land previously deemed to be garden. There appears to be a clear delineation between the pond area and the remaining field however there is also a separation between the field and the farmland as stated above.

Considering the signed declaration and all available aerial photographs including ones in the 10-year period, it is considered that on the balance of probabilities, the land use of a domestic garden, has been established and continuous in use, in excess of 10 years. The LPA have no evidence which conflicts with this evidence of the use being in place, as such, the balance of probabilities test is applied and in this instance the applicant has supplied enough evidence to conclude this test is met. To conclude, the LPA are satisfied that the existing use or operations described in the application are lawful and a certificate should be granted.

Recommendation

Certificate of lawfulness granted