
2021/1623

Mr Roger South

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

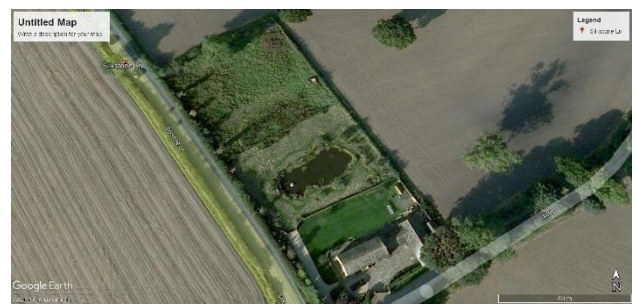
Adam Laith Barn, Silkstone Lane, Silkstone, Barnsley, S75 4DX

Description

The application relates to an area of land to the rear of Adam Laith Barn located on Adam Lane, Silkstone. The land is 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.



2003 Google Earth Image



2008 Google Earth Image



2009 Google Earth Image

Proposed Development

The application is for a certificate of lawfulness for an existing use of land as domestic garden and wildlife pond on land which has been used as such in excess of 10 years.

The applicant has provided the following evidence in support of the application:-

- Signed statutory declaration statement from the applicant in the presence of a solicitor stating that since the applicant took ownership of the property and adjacent field in 2003, there have been well established lawns. Dividing the lawn from adjacent field

was a wooden fence which was replaced by a stone wall in 2004/5 and walled the far side of the track

- The area used a lawn has been used as such since at least 2002 and that no agricultural use has taken place for at least 12 years within the lawned area
- The area to the far side of the stone wall is now used partially as a field and partially as a pond.
- Photograph JS1 – 2002 aerial photograph showing well established lawns to the side and rear of the property
- Photograph JS2 – 2009 aerial photograph

Consultations

Legal Officer – Assessed the application and submitted information. Has also considered the available aerial photos within google Earth. I attach the photos from 2003 to 2016 and 2008 to 2021 . If a certificate of lawfulness is granted it should not refer to domestic curtilage (which is a legal definition use on the GPDO and is not a use of land) but refer to this as a domestic garden or words of a similar nature.

Parish Council – No comments received

Neighbour comments – No comments 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 Council 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 on the basis. If the 10 years is established for the use the Council would not be entitled to take enforcement action in respect of the breach and the present use would thus be lawful.

Analysis of evidence for the use of the land as garden

In terms of the use of the land as garden and wildlife pond for 10 years, S191(4) says that the submitted evidence must satisfy the Council 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 and pond.

The submitted aerial photograph from 2002 shows the field as grassed. The land use to the south of the fence line appears to be domestic garden, having the appearance of lawned garden.

The 2009 aerial photograph shows the presence of a pond on the land subject to this application. There appears to be a clear delineation between the pond and the remaining field. Again, to the south of the stone wall, the appearance is of domestic garden space.

Considering all available aerial photographs, it is considered that on the balance of probabilities, the land use of domestic garden and wildlife pond, has been established and continuous in use, in excess of 10 years.

Recommendation

Approve subject to condition