

DELEGATED DECISION REPORT

HPK/2022/0510
Valid 07/11/2022

WINDY WALLS FARM
ASHBOURNE LANE
CHAPEL-EN-LE-FRITH

THE LAND BOUNDARY AS DEFINED WITHIN THE SECOND SCHEDULE BY A BLACK LINE CONTAINING A SINGLE STOREY STRUCTURE REFERRED TO AS A 'SUMMERHOUSE' (YELLOW AREA), RAISED TIMBER DECKED AREA CONTAINING A HOT TUB (GREEN AREA), AND CONSERVATORY/POTTING SHED ON THE NORTH-WESTERN ELEVATION OF THE STONE OUTBUILDING (RED AREA), AMOUNT TO LAWFUL OPERATIONAL DEVELOPMENT. THE AREA OF GRASS LAND TO THE FRONT AND SIDE (PEACH AREA), AREA OF GRASS LAND TO THE REAR (BLUE AREA), AND PATIO AND GRAVEL AREA TO THE REAR (PURPLE AREA) OF THE MAIN DWELLINGHOUSE KNOWN AS WINDY WALLS FARM, IS IN INCIDENTAL USE.
(CERTIFICATE OF LAWFULNESS - EXISTING)

MAIN ISSUES

- Whether, on the specific facts of the case and relevant planning law, the specific matter set out within the description of development is lawful, having regard to Sections 171B and 191 of the Town and Country Planning Act 1990.

DESCRIPTION OF SITE

The application relates to a parcel of land as defined by the red edge on the revised Location Plan received 22/02/2023 that contains the following:

- (i) an area of mowed garden to the rear (north) of the dwelling
- (ii) an area of mowed garden to the front (south) of the dwelling
- (iii) a single storey timber outbuilding
- (iv) an area of raised timber decking and hot tub
- (v) a dilapidated single storey outbuilding constructed of stone with a collapsed slate tiled roof that and dilapidated UVPC annex

The main dwellinghouse 'Windy Walls Farm' which has a simple rectangular form constructed in traditional natural stone with slate tiled roof, and orientated in manner that sees the principal elevation face south-eastwards towards Ashbourne Lane, is not included within the red edge of the revised Location Plan as submitted.

The single storey timber outbuilding (referred to as a 'Summerhouse') is situated a short distance beyond the rear elevation of the Farmhouse adjacent to the grassed garden. The area of timber decking lies immediately to the south of the Summerhouse that based on photographic evidence provided by the applicant, stands in excess of 300mm above ground floor level.

The dilapidated single storey outbuilding is constructed in a traditional stone with a tiled roof which has partially collapsed, situated immediately to the north of the public footpath that runs westwards from Ashbourne Lane. The building spans a width of 2.7m and a length of 6.5m, orientated with the dual pitched gables facing south-eastwards and north-westwards.

The building is defined by two small entrance doors on its south-western elevation. The north-eastern elevation is characterised by the end of a dry stone wall that extends in the direction of the side elevation of the main farmhouse, located approximately 11m distant. The north-western elevation is characterised by a dilapidated glass sunroom/extension that at the time of the application being submitted was found to contain various pieces of domestic paraphernalia of little value (e.g. buckets, spades, pot plants etc.).

The building has all the characteristics of an agricultural building and based on the detached spatial and visual relationship with the main farmstead, is considered by Officers to be situated outside of the domestic curtilage of Windy Walls Farmhouse.

The site has recently been the subject of a full planning application that sought to replace the existing stone outbuilding with a new independent open market dwelling. The application was refused under HPK/2021/0152 on 27th July 2021.

PROPOSAL

This application as originally submitted seeks a Certificate of Lawful Development for the Existing Use for the following:

1. The lawful use of the land (defined by the red edge on the Location Plan) is incidental domestic use/residential garden land use
2. The lawful use of the Stone Outbuilding is incidental domestic use
3. The conservatory extension to the outbuilding and standalone Summerhouse are both lawful operational development

The application is made up of the following plans and documentation:

- Revised Location Plan (Feb 2023)
- Annex/Store Existing Plans and Elevations
- Supporting Cover Letter
- Appendix 1 – Copy of Title Deeds 1983
- Appendix 2 – Copy of Land Registry Plan 2008
- Appendix 3 – Aerial Photograph 1993
- Appendix 4 – Summerhouse Invoice
- Statutory Declaration from William and Janice Stevenson October 2022

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/0002/0706	Two bedrooms, lounge and bathroom (Approved 19/03/84)
HPK/2007/0543	Conversion and Extension of Existing Outbuilding to form Holiday Let Unit (Refused 30/08/2007)
HPK/2008/0187	Resubmission of HPK/2007/0543 (Approved 08/05/2008)
HPK/2010/0469	Extension to Workshop (Approved 06/12/2010)
HPK/2021/0152	Removal of Annex/Store and erection of 1no. dwelling (Refused 27/07/2021)

Chapel-en-le-Frith Parish Council – No objection.

OFFICER COMMENTS

Whether, on the specific facts of the case and relevant planning law, the specific matter set out within the description of development is lawful, having regard to Sections 171B and 191 of the Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 relate specifically to applications seeking a Certificate of Lawfulness of an Existing Use or Development:

Section 191(1) states:

If any person wishes to ascertain whether –

- (a) *any existing use of buildings or other land is lawful*
- (b) *any other matter constituting a failure to comply with any condition or limitation 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

Section 191(2) goes on to state:

“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.”*

The online Planning Practice Guidance (PPG) originally published by DCLG in 2014 provides further guidance for applicants and Local Planning Authorities.

With regard to Lawful Development Certificates, the following guidance is considered to be relevant to the assessment and determination of the application:

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, 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.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.”

Paragraph: 006 Reference ID: 17c-006-20140306
Revision date: 06 03 2014

“A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

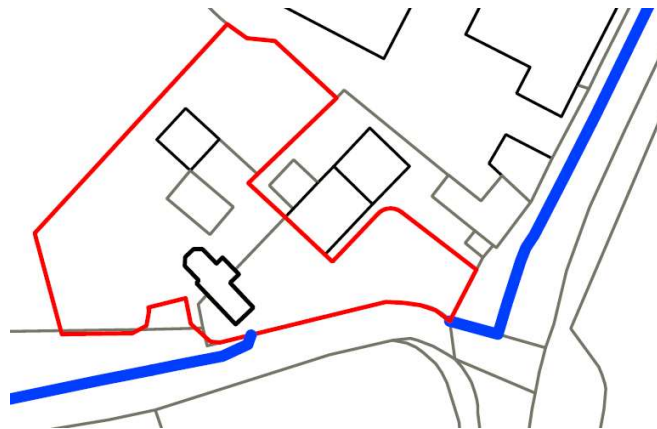
A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented." (My Emphasis).

Paragraph: 009 Reference ID: 17c-009-20140306
Revision date: 06 03 2014

An assessment of each of the aspects that the application seeks a certificate for is assessed below having regards to the specific facts of the case. Should it transpire that Officers are of the view that a Certificate cannot be granted for all uses/operational development, a revised description of development will be prepared, with an amended red edge where appropriate, that allows a positive Certificate to be granted.

1. The lawful use of the land (defined by the red edge on the Location Plan) is incidental domestic use/residential garden land use

The application as submitted showed the red edge on the Location Plan to include a considerable amount of land. A screenshot of the Location Plan as originally submitted is shown below:



Above: Screenshot of the Location Plan originally submitted with application

In order for Officers to be in a position to grant a positive Certificate for all land contained within the red edge to be incidental domestic use/residential garden, an assessment and planning judgement is required as to whether the land in question forms part of the domestic curtilage, as a matter of 'fact and degree' having regard to relevant case law.

In the event that some of the land but not all of the land within the red edge is considered to be situated within the domestic curtilage associated with the main dwellinghouse, the applicant would be invited to submit a revised Location Plan with an amended red edge.

If Officers still cannot agree with the applicant as to the extent of the red edge and that some of the land in question contains to fall outside of the domestic curtilage, it is possible, having regard guidance within paragraph 009 of the online PPG (2014) for the LPA to issue a positive Certificate for a re-drawn red edge that would be included at the bottom of the Decision Notice.

A number of High Court Judgements that considers the matter of domestic curtilage have been referred to by the applicant within their supporting Statement, and in subsequent email correspondence, which include the following:

Sinclair-Lockhart's Trustees v Central Land Board 1950:

A dwelling's curtilage is identified as land that is used for the "*comfortable enjoyment of a dwelling*" and, therefore an "*integral part of the same*" but it does not need to be enclosed and that "*it is enough that it serves the purpose of the house in some way*"

Methuen-Campbell v Walters 1979:

For land to fall within the curtilage of a building, "*it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building.*"

Sutcliffe v Calderdale BC 1982:

Indicates that domestic curtilage depends of 3 key issues: (i) *the physical layout relative to the dwelling*, (ii) *ownership past and present* (iii) *the land's use and function past and present*.

As referred to within the previous report, Officers have referred to the following High Court Judgements that refer to domestic curtilage:

Dyer v Dorset CC 1988:

It was held that curtilage is a small area forming part and parcel with the house or building which it contained or to which it was attached. In that context, the judge commented that the kind of ground most usually attached to a dwelling house is a garden.

McAlpine v SSE 1995:

Indicated amongst other things that curtilage is a small area about a building, that the curtilage land must be intimately associated with the building, and that the size of the area of ground is a matter of 'fact and degree'.

As evidenced above, planning Case Law has continuously and repeatedly not sought to define in 'black and white terms' what constitutes domestic curtilage. There have been various ways of describing what attributes curtilage must have, but ultimately, it is for the decision maker to assess the extent of domestic curtilage as a matter of fact and degree, based on the specifics of the case (i.e. each case on its own individual merits).

Officers are satisfied that the area of domestic garden to the front (south-east) of the principal elevation is intimately associated with the main dwellinghouse being flanked by a paved footpath that provides the main access point to the property, and is thus incidental to the dwellinghouse.

Similarly, the timber decked area, Summerhouse, and area of mowed garden to the rear of the main dwellinghouse is also considered to be intimately associated with the property and incidental to the dwellinghouse.

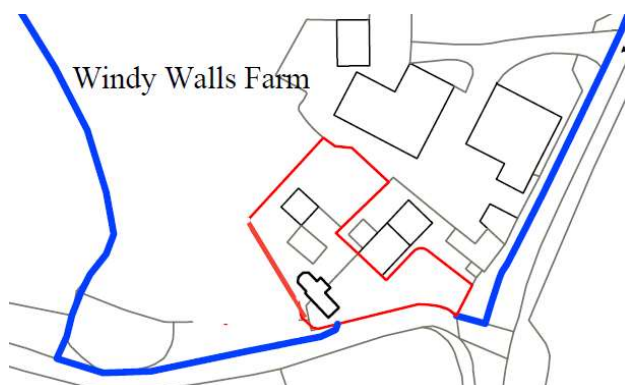
However, based on a site visit, a review of the arguments and supporting evidence that accompanies the application, and as a result of a planning judgement as a matter of 'fact and degree', the Local Planning Authority do not accept that any land to the south-west of the fence that bounds the timber decking, which includes the stone outbuilding (see Section 2 below) and surrounding land, lies within the domestic curtilage associated with Windy Walls Farm, is not incidental domestic use, and thus cannot be included within any positive Certificate.

Appendix 3 – an Aerial Photograph dated 1993, views the property from the south-west, and shows the principal elevation, a front garden area, and a small side garden defined by a large mature tree which, based satellite imagery from 2011 held by the Council, and site photographs taken in connection with the recent application under HPK/2021/0152 taken in April 2021, has been removed at some point between 2011 and 2021.

Having regard to the characteristics of domestic curtilage that are contained within the High Court Judgements referred to by the applicant and Officers above, it is our view that whilst the side garden does indeed fall within the domestic curtilage, this does not extend beyond or indeed include the stone outbuilding to the west.

With regards to the land west of and to the north of the stone outbuilding, no evidence has been presented with regards to its use for purposes incidental to the dwellinghouse. Given its visual characteristics – a wooded area with trees and natural vegetation – and its lack of spatial connection with the main dwellinghouse, it is the Council's view as a matter of planning judgement that this land cannot be the subject of a positive Certificate for its incidental domestic use.

Having been notified of the above opinion, the applicant has submitted a revised Location Plan, a screenshot of which is set out below:



Left: Screenshot of Revised Location Plan submitted by the applicant

This revised Location Plan continues to include land that in the opinion of Officers, based on its characteristics, its spatial and visual relationship with the main dwellinghouse, and evidence provided by the applicant, does not form part of the domestic curtilage and cannot be the subject of a positive Certificate.

The red edge below with green fill, shows the parcel of land that the Council can positively issue a Certificate for Existing Use as incidental domestic use in connection with Windy Walls Farm using the OS Basemap held by the Local Authority:



Above: *Extent of red edge with green fill that the Local Planning Authority are content to issue a positive Certificate of Lawfulness for Existing Use as land that is in incidental use to the main dwellinghouse Windy Walls Farm.*

2. The lawful use of the Stone Outbuilding is incidental domestic use

The most contentious aspect of the application relates to the single storey outbuilding located approximately 11m south-west of the main dwellinghouse which is characterised by a small UPVC conservatory/potting shed.

The applicant contends that this building has been and continues to be in incidental domestic use. The main evidence submitted in support of this aspect of the application comprises the relevant parts of the Planning Statement prepared by the agent, and a signed Statutory Declaration from the applicants William Stevenson and Janice Stevenson, dated 31st October 2022.

The Statutory Declaration makes the following claims in relation to the use of the stone outbuilding:

1. *The dwelling was purchased in 1983 with our two sons being aged 3 to 6 years old (Appendix 1 – Title Deeds)*

2. *The land to which the Certificate relates has not been used for any agricultural purpose since the time nor any non-incidental domestic purposes, including the outbuilding*
3. *Whilst our children were young they used the stone building within the Land as a play space (akin to a 'den') in addition to it being used for ongoing storage of domestic items.*
4. *As our children grey up their desire to the use the outbuilding for play purposes obviously diminished and ultimately ended. From the 1990's up to the present day, the outbuilding/conservatory has been used continually for incidental domestic storage purposes, including gardening equipment, akin to a domestic shed. Some basic gardening activities such as potting plants and seed trays also occurred. The incidental domestic storage use continues in both parts of the building (the stone outbuilding part and the attached part).*

Photographs of the stone outbuilding and attached conservatory/potting shed are set out below:



Above: *Photographs of the stone outbuilding and attached conservatory/potting shed*

In this particular case, based on the characteristics of the site, which includes the building benefiting from its own individual access, photographs taken on site (above) and a review of historic mapping and planning history, the building is considered to have a disjointed and severed spatial and visual relationship with the main farmhouse. Having regard to the specific characteristics, the Local Planning Authority content in the strongest terms that the building and its immediate surrounds

on its western and northern sides, do not form part of the domestic curtilage, as a matter of planning judgement.

In order for a positive Certificate to be granted, the building has to be in existing use at the time at which the application is submitted, and for a period of 10 continuous years prior to that date (November 2022).

With regards to its incidental use, the applicant submits that the building was used infrequently for leisure and play purposes throughout the early 1980's up until the 1990's. As part of the application, no historic photographic evidence of the use of the building as a "play house", "den" have been submitted with the application.

Whilst the Local Planning Authority fully accept that statutory declarations have to be given weight given their legal status, Officers are of the view that as an objective fact, the building cannot realistically be in existing incidental use if it is in a state of disrepair, and has a hole in the roof (i.e. on the date that the application was submitted, based on the evidence of a site visit, it is clear that the building is not used for incidental purposes, other than occasional storage of paraphernalia of little to no value and which does not rely on any shelter to preserve equipment.

Whilst the Council cannot provide evidence to the contrary that the building was used at some point in time as a play space / den by children (1980's and 1990's) a visual inspection of the building strongly suggests that the building has not been utilised for such a purposes for a considerable time (more than 10 years), given the health and safety implications associated with a dilapidated building.

The agent has responded to the above by conceding that the building has received little maintenance, but that the domestic use continues, and that just because the building is not in prime condition, does not mean that it has been used incidental to the existing dwellinghouse.

Photographs of the interior of the stone outbuilding are contained within Appendix 6 of the supporting Cover Letter and are set out below:



Left: Photographs of the interior of the stone outbuilding as set out under Appendix 6 of the Cover Letter

In response, The Council wish to make clear that it does not automatically follow that the occasional use of a parcel of land or building for leisure, entertainment or storage

purposes amounts to an incidental domestic use. For example, the occasional use of a parcel of land immediately adjacent to a dwellinghouse by children playing football or other sports does not make it incidental to the dwellinghouse, nor does it follow that the land or building falls within its domestic curtilage.

For these reasons, the Council do not accept that the stone outbuilding has ever been incidental domestic use in relation to Windy Walls Farmhouse, irrespective of whether it may or may not have been used infrequently and occasionally by young children in excess of 25 years ago, and since that date has, having regard to the above photographs, simply been used as a 'dumping ground' for items such as potting plants, tools and other gardening items.

3. The conservatory extension to the outbuilding and standalone Summerhouse are both lawful operational development

Evidence submitted in support of this existing development consists of Appendix 4 - an invoice dated 18th May 2009 for a product described as:

"Bespoke Wales 5x5m log cabin in 44mm wall thickness altered with 2no. extra windows 74cm x 133cm, roof shingles in brown colour and upgraded to double glazed units with thicker windows and doors and gasket seal".

The invoice has a letter head from a firm named 'Cedexx Services UK Ltd' which notes that a deposit of £1500.00 has been paid on 13th June 2009.

This invoice is considered to align with the characteristics and dimensions of the Summerhouse that is situated to the rear of the main dwellinghouse.

The Local Planning Authority hold historic aerial satellite data from 2011 that proves that the structure referred to as a Summerhouse has been in situ for considerably more than 4 years. As such, Officers are able to grant a positive certificate for this aspect of operational development.

Furthermore, the image of the 2011 aerial satellite image below shows that the aspect of development referred to by the applicant as a 'conservatory extension' – notwithstanding the use of this element and its connection with the main dwellinghouse – was in situ in 2011. As such, Officers are able to grant a positive certificate for this aspect of operational development.



Left: Aerial Satellite image from 2011 showing the presence of the Summerhouse and structure referred to as a 'Conservatory Extension' to the stone outbuilding

Whilst the description of development subject of the application makes no reference to the area of raised timber decking situated immediately to the south of the Summerhouse, Officers are satisfied that this aspect of operational development has been in situ for at least 4 years and can thus be included in a revised description of development that allows a positive Certificate to be issued.

CONCLUSION / PLANNING BALANCE

The application has sought a Certificate of Lawfulness for Existing Use under Section 191 of the Town and Country Planning Act which covers three aspects:

- The lawful use of the land (defined by the red edge on the Location Plan) is incidental domestic use/residential garden land use
- The lawful use of the Stone Outbuilding is incidental domestic use
- The conservatory extension to the outbuilding and standalone Summerhouse are both lawful operational development

For the reasons set out within this report, based on the facts of the case, which includes the specific characteristics of the site and land and buildings, the spatial and visual relationship between such land and buildings and the main dwellinghouse, and a review of all supporting evidence, Officers have concluded the following:

1. A single storey structure referred to as a 'Summerhouse' (yellow area) amounts to operational development which has been present on the land for a period of more than 4 years.
2. Raised timber decked area containing a hot tub (green area) amounts to operational development which has been present on the land for a period of more than 4 years.
3. A conservatory/potting shed on the north-western elevation of the stone outbuilding (red area), amounts to lawful operational development which has been present on the land for a period of more than 4 years.
4. The area of grass land to the front and side (peach area), area of grass land to the rear (blue area), and patio and gravel area to the rear (purple area) of the main dwellinghouse known as Windy Walls Farm, is in use for purposes incidental to the enjoyment of the main dwellinghouse on site, which is based on the evidence that the use has been undertaken on the land for more than 10 years.

It is therefore recommended that a positive Certificate of Lawfulness be granted relating to the above matters.

OFFICER RECOMMENDATION : Grant Certificate

Case Officer: James Stannard

Recommendation Date: 7th March 2023

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council