

DELEGATED DECISION REPORT

HPK/2023/0231
Valid 08/06/2023

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

THE LAND BOUNDED AS
DEFINED WITHIN THE
SECOND SCHEDULE BY A
BLACK LINE CONTAINING:
(1) RAISED TIMBER DECKED
AREA CONTAINING A HOT
TUB AREA (GREEN AREA)
AMOUNTS TO OPERATIONAL
DEVELOPMENT WHICH HAS
BEEN PRESENT ON THE
LAND FOR A PERIOD OF
MORE THAN 4 YEARS
(2) OIL TANK (BLUE 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
(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 to the west of the Windy Walls Farm complex. The farmhouse 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, and is not included within the red edge of the revised Location Plan as submitted.

The red edge comprises a large area of grassland to the west of the farmhouse, which contains a small cluster of mature trees, ad-hoc natural vegetation, and, as shown on the Proposed Block Plan, include the following physical structures:

- (i) Raised timber decking and hot tub located a short distance north-west of the main farmhouse, immediately south of a single storey Summerhouse
- (ii) Small oil tank located immediately adjacent to low drystone boundary wall to the west of the main dwellinghouse
- (iii) Dilapidated stone building referred to as an 'Annex/Store', and adjoining structure referred to within a previous Certificate as a "conservatory/potting shed"

The land defined by the red line on the Location Plan benefits from its own separate access.

A Block Plan has been submitted showing land and buildings that have been subject to a recent Certificate of Lawful Development for Existing Use granted by the LPA on 7th March under HPK/2022/0510. It is clear from this overlay that the plan set out within the Second Schedule of this Certificate was not entirely accurate, with regards to the footprint of the timber decked area, and the footprint of the conservatory/potting shed that adjoins the building referred to as an Annex/Store. This recent Certificate did not include the domestic oil tank referred to on the Proposed Block Plan.

The dilapidated single storey outbuilding (referred to by the applicant as an 'Annex/Store' 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

The Council have recently granted a Certificate of Lawful Development for the Existing Use as described in full on the Decision Notice relating to HPK/2022/0510 dated 7th March 2023.

In line with guidance set out within the Planning Practice Guidance (PPG), the Council took the decision to amend the red edge and also to amend the description of development, in order to grant a positive Certificate, owing to the fact that, having regard to the specific facts of the case and consideration of all available evidence, the Council were unable to grant a positive Certificate for the area of land and existing uses within that were the subject of the original application.

Further to this recent application, the applicant now seeks a Certificate of Lawful Development for the Existing Use for development described as follows on the Application Form:

“Certificate of Existing Use or Development to establish that the lawful use of the land outlined in red is incidental domestic use/residential garden land use and that the lawful use of the stone outbuilding is incidental domestic use.”

The above correspondences with the original description of development associated with the recently determined Certificate of Lawful Development application under HPK/2022/0510.

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

Plans

- Location Plan (Ref: 300)
- Block Plan (Ref: 301)
- Block Plan with Schedule 2 Overlay (Ref: 302)

Documents

- Application Form
- Supporting Statement
- 3no. Photographs (dated 8th June 2023)
- Photograph of Raised Timber Decking (dated 8th June 2023)
- Photograph of 'Conservatory and Outbuilding' (dated 8th June 2023)
- Statutory Declaration from applicants Mrs and Mrs Stevenson (dated 31st 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)
HPK/2022/0510	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 northwestern 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 (Granted 7 th March 2023)

Chapel-en-le-Frith Town Council Comments

No objections

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).

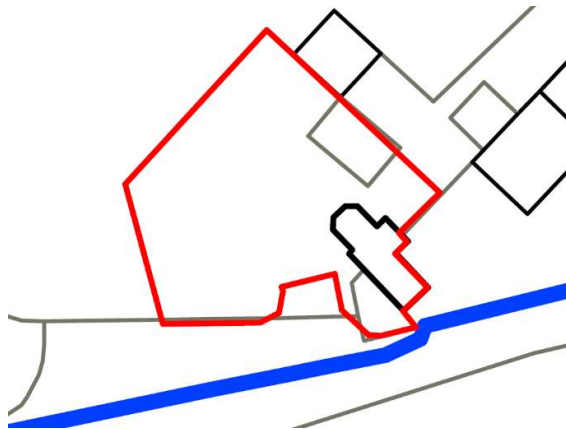
Paragraph: 009 Reference ID: 17c-009-20140306

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 acknowledge that, as shown on the Block Plan overlay, the plan included within Schedule 2 of the Certificate recently granted under HPK/2022/0510 has not

accurately defined and included the area of raised timber decking and hot tub, that was judged as being lawful operational development, which, based on satellite evidence, had been in situ for longer than 4 years. As such, the Council are happy to issue a positive Certificate with an amended plan that confirms that the raised area of timber decking and hot tub, as marked on the Block Plan, is lawful.

It is also acknowledged that the plan contained under the Second Schedule of the Certificate granted under HPK/2022/0510 did not accurately reflect the footprint of the conservatory/potting shed, and adjoins the building referred to by the applicant as an 'Annex/Store'. The Council are therefore happy to issue a positive Certificate with an amended plan showing the correct footprint of this aspect of development, which has been judged to be lawful operational development, having been in situ for 4 years.

It is also accepted that the oil tank identified on the Proposed Block Plan has been in situ for 4 years and is therefore lawful operational development.

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, or is in incidental domestic use, and thus it 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, this application contains aerial satellite (Figures 7-11) within the supporting Statement which show images which date from 2005 to 2022. The evidence appears to simply content that because the area in question have been well maintained and mowed throughout this time period, that it automatically follows that the area in question is in domestic use incidental to the main dwelling. Having regard to relevant case law, the Council do not accept this assertion.

Given its visual characteristics and its lack of spatial connection with the main dwellinghouse, it is the Council's confirmed and unwavering position, as a matter of planning judgement that this land cannot be the subject of a positive Certificate for its incidental domestic use.

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:



Left: 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 contend 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

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 the casual deposit of items such as potting plants, tools and other gardening items.

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 correctly shown dimensions of the raised timber decking and inclusive hot tub, and small oil tank as shown on the Block Plan is 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. The raised timber decking area as shown in its larger form on the Proposed Block Plan, which differs from the plan contained within the Second Schedule of the Certificate issued under HPK/2022/0510 does amount to lawful operational development that has been in situ for 4 years, and is immune from enforcement action
2. The oil tank shown immediately adjacent to the low drystone boundary wall a short distance west of the main dwellinghouse amounts to lawful operational development
3. The 'conservatory/potting shed' as shown in its larger form on the Proposed Block Plan, which differs from the plan contained within the Second Schedule of the Certificate issued under HPK/2022/0510 does amount to lawful operational development that has been in situ for 4 years, and is immune from enforcement action.

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: 27th July 2023

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council