

DELEGATED DECISION REPORT

HPK/2024/0358
VALID 17/10/2024

BANKWOOD MILL
FARMHOUSE, BANKWOOD,
CHARLESWORTH,
DERBYSHIRE, SK13 5ER

APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE
TO ESTABLISH THAT THE
LAWFUL USE OF THE LAND
OUTLINED IN RED IS
INCIDENTAL DOMESTIC
USE/RESIDENTIAL GARDEN
LAND USE
(CERTIFICATE OF
LAWFULNESS –EXISTING)

MAIN ISSUES

Whether the land identified can lawfully be used as incidental domestic use / garden land.

DESCRIPTION OF SITE

The application site relates to a parcel of land which is located adjacent to a detached dwelling, known as Bankwood Mill Farmhouse. The site is located within an area of countryside and Green Belt, as defined by the Local Plan Policies Map.

The application site has an upper terraced, more formal garden, which is positioned behind a retaining wall and fencing. The retaining wall and fencing faces towards a lower parcel of land which includes garden and parking area which is accessed from the lane. The application dwelling has accommodation over three floors, the lower level has a door which provides access to/from the lower parcel. The upper and lower parcels of land are connected adjacent to a large pond.

PROPOSAL

The application seeks a Lawful Development Certificate to establish that the existing use of the land is lawfully in use as a garden/domestic use in association with Bankwood Mill Farmhouse.

PLANNING HISTORY

NMA/2012/0046 - Non Material Amendment - Reduction in front to rear dimension on extension, replace door on rear elevation with window, remove rear elevation steps, inward opening patio doors at ground level & Juliette Balcony & doors. Existing windows in Utility Room & Bathroom to be reduced in size. Right hand side of new gable windows omitted – Approved – 25/01/13

HPK/2012/0571 – Proposed Double Garage – Refused – 29/11/12

HPK/2011/0259 – Rear Double Garage – Refused – 29/11/11

HPK/2010/0041 - Renewal of HPK/2006/0291 to extend time limit for two storey extension and internal alterations with external window alterations – Approved 06/05/10

HPK/2006/0291 - Two storey extension and internal alterations with external window alterations – Approved – 01/06/06

CONSULTATION RESPONSES

Public Comments

None received

Parish Council

Charlesworth Parish Council noted that the caravan on the application site was in use by a member of the household and did not require planning permission. The Council resolved to make no comment

DCC Highways

The section of Long Lane off which the application site is located is not part of the publicly maintainable highway and the application is considered to have no highway impact. There are no highway authority objections to the application.

OFFICER COMMENTS

Background and Relevant Legislation

The use, as detailed in the application is for:

Certificate of Lawful Existing Use or Development to establish that the lawful use of the land outlined in red is incidental domestic use/residential garden land use

This certificate has been submitted under s.191 of The Town and Country Planning Act to determine whether an existing use of land adjacent to Bankwood Mill Farmhouse, as *incidental domestic use/residential garden land use*, is lawful. S.191(2) states that uses and operations are lawful at any time if no enforcement action may be taken in respect of them. S.171B sets out the time limits for where no enforcement action may be taken and confirms, that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this instance, therefore, it needs to be established whether the use has endured continuously for a period of more than 10 years from the date that the application was submitted to the LPA. The relevant date is therefore 22 August 2014, from which a continuous use must be demonstrated.

S.191(4) states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate

to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, if an LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

Normally when a land use is discussed in similar terms to that of “residential domestic garden” and it is inferred or taken for granted that that this is inclusive of other general uses normally connected with the occupation of a dwelling, such as household storage, children’s play, dining, washing lines, car parking etc. – either, the land falls within the curtilage of a dwellinghouse where s55(2)(d) exempts land uses for purposes incidental to the enjoyment of the dwellinghouse from the “meaning of development”; or the land falls within the same planning unit as land with a dwellinghouse on it and those other uses are protected by an ancillary link to the primary dwellinghouse use of the land. Terms such as “domestic garden”, “domestic curtilage”, “residential garden” etc. are simply rather imprecise, perhaps clumsy, ways of describing land that falls within the curtilage or planning unit of a dwellinghouse. It is not the case that those ancillary or incidental uses automatically ‘piggy back’ on any use of land as a ‘garden’; a garden, in land use terms, is quite capable, it seems, of existing and being enjoyed without any specific association with a dwellinghouse.

“Residential Garden Land Use”

‘Garden’ itself is not a term recognised, defined or referred to anywhere in the Act. The definition of ‘Garden’ in the Oxford English Dictionary is described as “*a piece of ground used for growing flowers, fruit or vegetables*”. Similarly, in the Collins English Dictionary ‘garden’ is defined as “*an area of land normally planted with grass, trees, flower beds etc. 2. An area of land used for the cultivation of ornamental plants, herbs, fruit, vegetables, trees, etc.*”

The application site primarily includes an area of hardstanding (used for parking) while the land surrounding this includes grass/lawn and planting. It is agreed that in general those landscaped parts of the land could overall reasonably be described as a ‘Garden’.

With consideration of whether enforcement action could be taken to require this ‘garden’ use of the land to cease and the planting to be removed, I turn to s.55(2) of the Act. Specifically, I note, that the Act at s.55(2)(e) exempts the use of any land for the purposes of agriculture from involving development on land. Where there might be a common understanding of what is meant by agriculture, something to the effect of rearing crops or livestock, the definition at s.336 of the Act makes it clear that additionally for the purposes of the Act it should include, inter alia, *horticulture*.

The Oxford English Dictionary defines ‘horticulture’ as “*the art or practice of garden cultivation and management - from the Latin hortus garden + culture*”. The dictionary definitions for both horticulture and garden or gardening are apparently interchangeable to the extent that leads me to conclude that the use of land, where it is cultivated, enjoyed and tended to as a ‘garden’ in the terms that are described by

the applicant and defined in the dictionary, amounts to 'horticulture' and therefore to that extent the land is used for the purposes of agriculture and that use should not be taken to involve development. The use of land simply as 'garden' therefore, is lawful and a certificate for those landscaped parts of the land could be granted in those terms.

Use for any purposes Ancillary or Incidental to any nearby dwelling

While the above may be the case it is, in all probability, that the applicant hopes to establish that those parts of the land could be lawfully used for something other than or in addition to agriculture or horticulture i.e. that its lawful use is something more than simply that of a garden as defined by the dictionary and considered to be 'agriculture' for the purposes of the Act. It would appear that the applicant wants to establish that the land can be used for those purposes normally considered to be incidental or ancillary to the use of a dwellinghouse where it forms part of a dwelling's curtilage or planning unit.

There is nothing implied in the dictionary definitions that a 'garden' is always or often also used for purposes that are incidental or ancillary to a dwellinghouse. It just so happens that in many cases a 'garden' does also fall within land that is within the curtilage or planning unit of a dwellinghouse and therefore, it is often discussed or thought about in those terms. Outside the curtilage or planning unit of a dwelling there is no reason why a material change of use occurs if the 'garden' is tended to or enjoyed by nearby residential occupants.

To be convinced, on the balance of probabilities, therefore, that the land can be lawfully used for something other than garden or agriculture, as discussed above, I need to be clear that either the land falls within the curtilage or planning unit of a dwellinghouse or that other uses of the land resulted in a material change of use 10 years prior to the application and that the use has been continuous since that time.

The distinction between "planning unit" and "curtilage" is also considered later in this report.

Evidence Submitted

The application has been supported by a planning statement and other additional information. The planning statement repeats the content of other additional information provided.

Other information includes:

Email from neighbour stating *"I am one of Mr and Mrs Malamed's neighbours. I have lived at 4 Besthill cottages for the past 10 years, and for the whole of that time the area which currently has a caravan on it at Bankwood Mill Farmhouse has been used for parking and/or a garden. This was the case with the occupants prior to Mr and Mrs Malamed as well. My mother, who grew up in the village, said that this has been the case since she was a child (she's in her 60s now)".*

Email from applicant stating *"I would like to confirm that since purchasing Bankwood mill farmhouse in 2016, we have consistently used the area marked in red as our drive and the grassed area around it as part of our garden. It is the only part of our home that is accessible to vehicles so we and previous owners have always used it as a drive. The grassed area has been used for our children to play and we've hosted many outdoor parties there"*.

Email from previous owner *"As the previous owner of Bankwood Mill Farmhouse I can confirm that the area currently used as a drive was also used by ourselves as a drive since we purchased the house 2010. It was already established and used as such by the owners before us. The area of grass next to the drive was also used as a garden as the kitchen and utility room was located on the lower ground floor and opened up onto it. Our children and grandchild used it for play and we held many parties on there in the summer months"*.

Google Earth imagery dated 2023, 2022, 2020, 2019, 2018 and 2017.

Any other Evidence

Planning History of the application site (outlined above)
Other aerial imagery preceding 2017
Online sales information/photographs

Analysis of the Available Evidence

Aerial Photography, whilst not definitive, is a useful tool in determining activities and the extent of where those activities have taken place through time. A number of aerial photographs have been provided by the applicants to support their case.



Google Earth © - June 2023

In the above image from 2023, the land in question appears to be well used with various vehicles parked on the hardstanding and the surrounding land well maintained.



Google Earth © - May 2019

In the above image from 2019, the land in question included a parked vehicle on the hardstanding and the surrounding land well maintained.



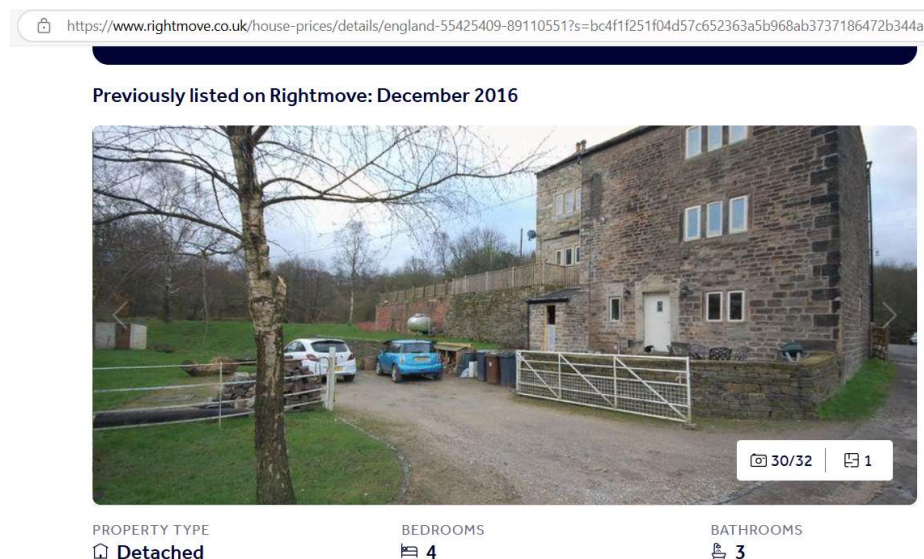
Google Earth © - June 2017

The above image is from 2017 and is the oldest aerial photograph submitted with the application. This shows an area of hardstanding and a vehicle (possibly caravan) parked adjacent to the hardstanding. The surrounding land well maintained.

Whilst the Google images cover the period from 2017, it is necessary to consider the use of the land from August 2014.

The submission indicates that the applicant moved into the property in 2016 (unspecified date). From that date they suggest that the land was in domestic/residential use.

There is evidence available on Rightmove which provides photos from the sales particulars. Rightmove (and other websites) indicate that the dwelling was sold in December 2016.

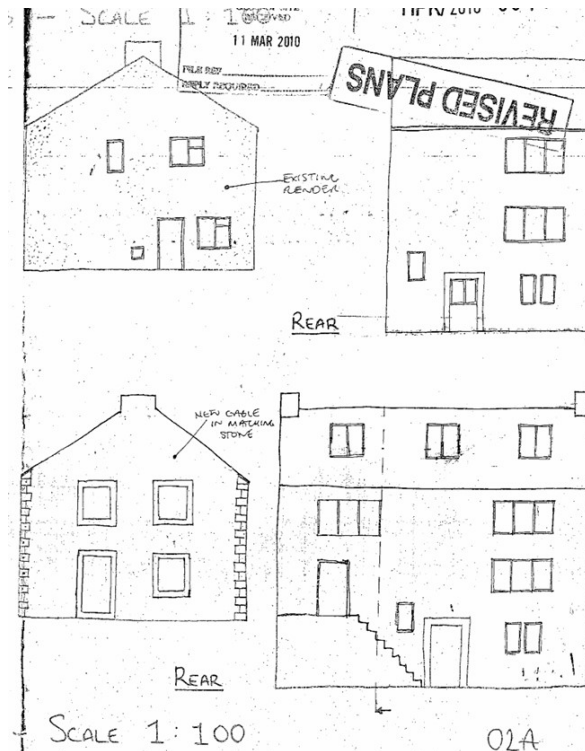


Screenshot from Rightmove website

The above screenshot shows the parcel of land in question taken at some time in 2016 (it is not clear how long the property was on the market). The photo shows parked vehicles set behind fencing and gates. With bins, oil tank and other domestic paraphernalia present. The area of hardstanding does appear to show signs of wear and tear and some plant life indicating that, at that time, it was not a recent installation. Also of note is a doorway leading onto the area of land.

The submission includes comments from the previous owner of the property, who owned the site from 2010. They confirm that they used the land as a drive since they purchased the property and make the observation that a doorway within the property leads on to land. Earlier aerial photography precedes 2010 and, therefore, this evidence cannot be corroborated (or disproved). Although the presence of a door would suggest a domestic function from that side of the property.

Plans from a planning application in 2010 (Ref: HPK/2010/0041) show the doorway present in both the existing and proposed elevations. This was the renewal of a 2006 planning application (HPK/2006/0291). The red edge for those planning applications also included the land, although it also included the large pond to the rear and the land on the opposite side of the access track (adjacent to the river).



Extract of approved plan relating to HPK/2010/0041

The version of events presented by the applicant, and the former owner, have been corroborated by a neighbour who has said that the land has been used as parking/garden for 10 years.

Two planning applications for the construction of a garage on the land were refused on the basis that the position of the proposed garage was “outside the domestic curtilage” (HPK/2011/0259 and HPK/2012/0571). These were sited, broadly, on the location of where existing hardstanding lies.

During those times the hardstanding was not present. Clearly the presence of hardstanding for parking makes its more obvious that the land is being used for parking, if not other domestic purposes, particularly as the property has a more formal “upper” garden space which is separated by a retaining wall and fence. Nonetheless, the observations at that time may not necessarily be definitive to establish what the lawful use of the land was.

Even if the above is wrong. It is evident that a change of use of the land would have occurred since those observations and the likelihood is that this would have been more than 10 years ago.

Turning to the nature of the use itself the submitted evidence and photographs indicate that the land has been used for parking purposes and as garden. Reference is also made to children playing and parties being held on the land. I am not convinced by the consequence of this, in land use terms its impacts would seem minimal, and by its nature it will occur intermittently, occasionally and for relatively short periods of time. In any event, the land is cultivated and tended to as a garden,

a horticultural land use to provide pleasant environment. I am unable to determine that this is anything other than those with private access to the land enjoying it as such. The limited presence of persons enjoying the land as a garden or pleasant open ground is simply part of or ancillary to that horticultural use.

There is evidence of other domestic paraphernalia such as bins on the land. These items, however, although remaining in situ, were small and largely portable (e.g. bins) with limited physical impact. I am unable to determine that these activities or uses amounted to an act of development, they again would in my assessment be inconsequential in land use and planning terms – de minimis or at most ancillary or part of people enjoying and spending time in an area of pleasant cultivated land used primarily for horticulture and parking.

It is also of note that if other activities or uses were to result from material change of use the General Permitted Development Order permits land to be used temporarily for 28 days in a calendar year without a planning permission being required. Beyond any provision that might be made in the GPDO the Council can not certify that the land can be used for any purpose other than a garden and parking area.

In assessing all of the information which is available to the Council, it is considered, on the balance of probabilities, that the land has been in parking / garden use only for a period in excess of 10 years and that a certificate could be issued in those terms.

Distinction between Planning Unit and Curtilage

With the observations of the earlier planning applications in mind, it is also very important to highlight that the term “curtilage” is not defined in planning law as a “land use”. The Oxford dictionary definition is “an area attached to a dwelling house and forming one enclosure with it”

It does not automatically follow that land which has been subsequently “annexed” for parking, garden or indeed any other residential purposes (and that use is established), becomes part of the residential “curtilage” of a dwelling.

Therefore, land can have a residential use and form part of the planning unit, but it need not form part of the original “curtilage” of the property.

In this instance, it may therefore be reasonably concluded that the original “curtilage” of the dwelling was the land at the upper level as that land has the more functional relationship to the dwelling and forms one enclosure with it. As such the application site is not considered to be residential curtilage. However, the purpose of this lawful development certificate is to establish the use of the land in planning terms rather than the extent of a curtilage.

CONCLUSIONS

There is sufficient evidence, on the balance of probabilities, that the land adjacent to the property known as Bankwood Mill Farmhouse, as shown on the supporting plan, has been in continuous use as parking in excess of 10 years and as garden, which

does not constitute development and is therefore lawful. It is recommended that a certificate is issued in those terms.

OFFICER RECOMMENDATION: **Approve Certificate**

Case Officer: Declan Cleary

Recommendation Date: 02/09/2025

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council