**DELEGATED DECISION REPORT**

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| **SMD/2018/0126**<br>**Valid 28/02/2018** | **WETLEY ABBEY COTTAGE**<br>**ABBEY ROAD**<br>**WETLEY ROCKS** | **CERTIFICATE OF LAWFULLNESS FOR EXISTING USE OF DOMESTIC RESIDENTIAL GARDEN.**<br><br>**(CERTIFICATE OF LAWFULNESS - EXISTING)** |

## DESCRIPTION OF SITE

The applicant lives in a converted farm building that formed part of Wetley Abbey Farm. The farm building became a dwelling when planning permission was granted for the material change of use in 1981. The land edged red with the planning permission went around the farm building providing it with a modest curtilage that is long and narrow at the front and back and gives parking space to the side.

The application site is a remote 0.1 hectare (approx. 18m x 45m) rectangular parcel of land some 50metres to the south west of the dwelling on the other side of the neighbouring property Wetley Abbey Farm. The site was not included with the planning permission granted for the new dwelling conversion but it was separated from land belonging to the farm and conveyed to the new occupants and owners of the dwelling conversion in 1981. It is accessed via a right of easement across the Abbey Farm property. It is physically and functionally separate from that of the dwelling and was not included within the land edged red when planning permission was granted to use the outbuilding as a dwelling. It is not a small area forming part and parcel with the house and is not therefore within the curtilage of the dwelling.

A wire fence and conifer hedge divides the site from the land still belonging to Abbey Farm to the east. Prior to the recent introduction of unauthorised developments (including a paved patio, gravel hardstanding, stable block, second vehicle access, and garden shed) old aerial photographs show the land simply to be a mowed area of grass with mature trees enclosing all four sides and a small grouping of what maybe fruit trees on the northern third of the site

## THE APPLICATION

The applicant describes on his forms the existing use of the land as a **"**domestic residential garden". He then makes reference to a children's trampoline, a garden shed, children playing, maintaining the lawn area, growing vegetables and dining.

A number of operational developments have been carried out on the land, without a grant of planning permission from the LPA – a paved patio, gravel hardstanding, garden shed, new vehicle access and a stable building, they are not mentioned in

the application and their relevance to the current or most recent use of the land is not explained.

## SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SM.9880 Change of use of farm building to single residential dwelling 25th June 1981.

## CONSULTATIONS

### Publicity

Site Notice expiry date: 6th April 2018

### Public Comments

None received

Letters from the two adjoining landowners form the applicant's evidence

### Town / Parish Comments

No Objections – providing it remains a garden in perpetuity.

## OFFICER COMMENTS

Applicable Legislative Framework

Normally when a land use is discussed in terms of "residential domestic garden", or similar, and there is an implication that this can lawfully include other general uses such as, household storage, children's play, dining, washing lines 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 dwelinghouse from the "meaning of development"; or the land falls within the same planning unit as the dwellinghouse and those other uses are protected by an ancillary link to the primary residential use of the land.

Otherwise, where the land does not fall within the curtilage or the planning unit of a dwellinghouse, simply gardening land amounting to horticulture or agriculture is a use that would seem to fall within the definition of agriculture provided at s.336 of the Act, and therefore, exempt from the "meaning of development" by virtue of s.55(2)(e). Where the lawful use of land has been considered to be nothing other than an, essentially, 'agricultural' use of land, new or different uses would only lawfully affect land use status, if those uses resulted in a material change of use and had continued for 10 years without action being taken.

In this case the application site was not included with the planning permission granted for the applicant's dwellinghouse in 1981, and with consideration of the physically separate and distant relationship between the dwelling and the site, it forms neither part of the curtilage of the dwellinghouse or shares land forming the

same planning unit (*Duffy v. S.o.S. for the Environment [1981]*). Therefore, the land can only lawfully be used for agricultural or horticultural purposes unless the introduction of other uses amounted to a material change of use and they have been continuous for 10 years prior to the submission of the application.

The Evidence

Aerial photographs taken in 1999, 2003, 2006 and 2011 do not show the land to have been anything other than mowed grass land with some tree cover. The only evidence that has been submitted consists of two letters from neighbouring land owners – the owner of Wetley Manor Care Home and the resident of Wetley Manor Farm:

- The owner of the Care Home simply says that the land has always been a 'private garden', a rather generic or vague term without any clarification as to precisely what is meant by that or what he has observed, there is no reason to believe that he is describing anything other than a use that would be provided for by the 'agriculture' exemption at s.55(2)(e) of the Act.

- The resident at Wetley Abbey Farm has lived at the property since 2006, he states that each previous owner has 'used and treated' the land as their 'residential garden' - mowing the lawn, general gardening, dining outside and for children to play etc. 'Mowing the lawn' and 'general gardening' would not appear to be activities that would be at odds with a horticultural use, again provided for by the 'agriculture' exemption – indeed many of the aerial photo's show that the grass had been mowed. He then refers to dining outside and for children to play, but does not expand on his observations to an extent where it is possible to determine that these activities amounted to material change of use and remained a continuing use of the land for a ten year period. His use of the term 'etc' as though there is some implied general understanding of the type of uses he is referring to is misplaced, the presented evidence must be clear and precise demonstrating exactly when, how and to what extent the material change of use occurred. The applicant can not rely on an ancillary or incidental link to the use of his dwellinghouse to demonstrate lawful status and therefore, an attempt to simply describe or list uses conventionally associated with a dwellinghouse does not assist his case.

It is possible that previous owners of the garden/horticultural land have on occasion enjoyed leisure time on the plot, and that would not be unexpected. However, it seems unlikely that such activity would have been of consequence to result in 'material change of use' and then had the continuity to establish immunity – in the same way that a picnic, kick about or game of cricket in a field or meadow does not result in its material change of use. In any event the presented evidence does not demonstrate with sufficient clarity and precision the extent or scope of these activities and clearly the applicant has not demonstrated that the lawful use of the land is different from that of a horticulture use.

Another significant point to note in this case, is that in December 2015 a 'material change' of use did apparently occur with the introduction of a substantial stable building and sometime after, a paved patio. These operations were carried out

without planning permission and appear to be indicative of a change to the land use. They remain on the land and are not referred to in the description of the existing land use or explained in the account of recent planning history. Every material change of use is an act of development requiring planning permission. While the submitted evidence in this case does not show the previous land use to have been anything other than 'agriculture', it is worth noting that any change back to a previous use following an intervening material change of use, would be yet another material change of use requiring planning permission. In any event, the description of the 'existing use' does not appear at all accurate because it does not take account of these recent developments and uses.

**CONCLUSION**

A certificate can not be granted for the terms of use described by the applicant, the evidence does demonstrate that this is either the existing or lawful use of the land.

The evidence does not demonstrate that the lawful use of the land is anything other than a use that shall not be taken to be development by the exception at s.55(2)(e) of the Town and Country Planning Act i.e. an agricultural use of land.

**OFFICER RECOMMENDATION : REFUSE**

**Case Officer: Ben Hurst**
**Recommendation Date: 10th April 2018**

X B.J. Haywood

Signed by: Ben Haywood

**On behalf of Staffordshire Moorlands District Council**