DELEGATED DECISION REPORT

SMD/2019/0089 **Valid 11/02/2019**	**HOLLY OAK FARM CHAPEL LANE** **GRATTON**	**APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT - EXISTING USE OF PIECE OF LAND AS A VEGETABLE GARDEN** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES

- Whether planning permission is required for the use of the piece of land for the growing of vegetables and if so;
- Whether or not there is evidence to demonstrate that the land has been used as a vegetable garden in excess of 10 years;
- Whether the use described is lawful in accordance with the meaning of Section 191 of the Town and Country Planning Act 1990.

DESCRIPTION OF SITE

The application site is a piece of land to the front (south) of a dwelling known as Holly Oak Farm, Chapel Lane Gratton. The land in question is divided from the garden of the house by a driveway and measures (on plan) approximately 20m x 12m at its widest point. During the site visit it was noted that the land was split into two sections by a trellis-style fence. The western part of the site consists of a lawn, flower borders, plant/vegetable growing area (exposed soil), vertical 4-post trellis and a poly-tunnel. The eastern part of the site has a lawn, pond and timber pergola with seating area underneath. Holly Oak Farm sits at right angles to Chapel Lane, has its own vehicular access and external amenity space. Holly Oak Farm is one of a very small number of domestic properties along this stretch of road. The dwelling is located within the Green Belt.

PROPOSAL

This is a lawful development certificate application for the existing use of a piece of land as a vegetable garden. The applicants claim that the land has been used as a vegetable garden for the last 19 years. The application is accompanied by a letter of support from a neighbour, a site plan, a block plan and two colour photographs (one taken from the ground and the other a bird's-eye view), both of which are undated.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Core Strategy Development Plan Document (Adopted 2014): Not applicable as the application is for a Certificate of Existing Lawful use.

National Planning Policy Framework

Including paragraph 2 which states 'Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

80/08978/OLDDC	Erection of a double garage. Approved.
84/13634/OLDDC	Site for a dwelling. Refused.
00/00941/FUL	Two storey side extension to provide new stairs and WC. Refused and dismissed at appeal.
01/00494/FUL	Two storey extension (resubmission). Approved.

CONSULTATIONS

Publicity

Site Notice - Expired
Neighbour consultation period ends: 11/03/2019

Public Comments: No representations received.

Horton Parish Council: Support the application.

OFFICER COMMENTS

Would planning permission have been required for the use of the land as a vegetable garden?

The application seeks an existing lawful development certificate for the 'existing use of a piece of land as a vegetable garden.' The applicants have confirmed (via email) that the vegetables are all grown from seed and that they are consumed by themselves and family members. Any vegetables that are left over are given away to friends or are frozen and at the time of the site visit the soil borders contained an array of plants and bushes.

Paragraph 2 of Section 55 of the Town and Country Planning Act 1990 (The Act) sets out the operations or uses of land that shall not be taken (for the purposes of the Act) to involve development. Part (e) refers to the use of any land for the purposes of agriculture or forestry (including afforestation). The definition of agriculture is set out at paragraph 336 of the 'Act' and includes (relevant to this application) horticulture, fruit growing, seed growing, market gardens and nursery grounds.

It would appear that permission would not have been required for the use of the land as a vegetable garden.

Evidence to demonstrate that the land has been used as a vegetable garden in excess of 10 years.

The applicant has submitted two photographs as part of the application, both of which are undated. Holly Oak Farm secured approval for a two-storey side extension on 4th July 2001 (01/00494/FUL) with a condition to ensure the works commenced within 5 years of this date. The birds-eye view photograph clearly shows the approved two-storey extension in place and the vegetable garden can be seen in the location identified within the submitted site and block plans. Examination of the council's Building Regulations records shows that work on the extension started on 9th April 2002 and signed off as completed by 16th December 2004. This means that the aerial photograph cannot be dated any earlier than April 2002, although likely to be later due to the advanced (if not completed) stage of the works.

Of more significance is the availability of the council's own aerial photographs. Photographs of the property were taken on 18/07/2006, 8/10/2011 and 7/5/2018 Each photograph shows the site in question although the 2011 photograph is not as clear due to what appears to be a tree casting its shadow over much of the site. The information to hand demonstrates that the vegetable garden has been in the location identified in excess of 10 years.

Vegetable garden use

For the above reasons it is recommended that a certificate of existing lawful use is issued for the use of the land edged red as a vegetable garden.

Other development

The red edge application area also includes freestanding timber trellis posts, pond, fencing and a pergola. The application makes no reference to these features and the certificate does not grant any form of consent for them. The council's 2006 aerial photographs do show the presence of a pond therefore this feature would, by default, be immune from enforcement action.

CONCLUSION / PLANNING BALANCE

It is recommended that a certificate of existing lawful use should be approved in accordance with the application description provided by the applicant, that being 'Application for certificate of lawful development – existing use of piece of land as a

vegetable garden.' The use of the land as a vegetable garden would not involve development as set out within Section 55 of the Town and Country Planning Act 1990 and in addition the evidence available leads to the conclusion that the land has been continually used in this manner for a period in excess of 10 years.

OFFICER RECOMMENDATION : Approve

Case Officer: Lisa Jackson
Recommendation Date: 31/05/2019

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council