

DELEGATED DECISION REPORT

SMD/2025/0281
Valid 16/06/2025

HEATH HOUSE FARM
CAVERSWALL OLD ROAD
FORSBROOK

CERTIFICATE OF LAWFULNESS
FOR EXISTING USE - INCLUDE
LAND ADJACENT TO HEATH HOUSE
FARM USED AS GARDEN INTO
DOMESTIC BOUNDARY/GARDEN.

(CERTIFICATE OF LAWFULNESS -
EXISTING)

MAIN ISSUES

- Whether or not the site has been used for garden land continually for over a period of ten years.
- Whether the use of the land constitutes a material change of use.

DESCRIPTION OF SITE

The application site is Heath House Farm, situated to the north-west of Forsbrook village and sat within generously-sized grounds. To the south-west of the dwelling is the land the subject of this application. At the time of the site visit the land was laid to lawn and had the appearance of being well tended. Trees and hedgerows bound the site and there are several trees positioned away from the boundaries. Of note is the presence of a timber shed, sat upon what appears to be a concrete and brick-built plinth. The site is located within the Green Belt although the Green Belt status does not have a bearing upon the outcome of this application decision.

PROPOSAL

The application is for a certificate of existing lawful development for the use of a parcel of land adjacent to the Heath House dwelling, as a garden. The applicants have described the proposal as 'Certificate of Lawfulness for existing use – include land adjacent to Heath house Farm used as garden into domestic boundary/garden.'

The application is accompanied by a Location and a Site Plan, 2 x Statutory Declarations and a Planning Statement.

The Planning Statement (at section 3.0), describes the proposal as follows;

3.1 The applicant seeks a Certificate of Existing Lawful Use and Development in connection with the use of land around the farm house as private garden and amenity land. As such, this is not an application seeking planning permission, with the consequence that the merits of the use seen in terms of national planning policy or the local development plan are not matters to be taken into account in the decision making process.

3.2 By virtue of Section 191(1) it is the applicant who is required to specify the land and describe the use or operations for which a Certificate is sought, albeit the Authority is entitled to modify the description and substitute a new description in accordance with the provisions of Section 191(4) of the Town and Country Planning Act 1990 (as amended).

3.3 A Certificate of Lawfulness for an Existing Use is therefore sought specifically for the following:

- *The use of land as residential garden / amenity land associated with Heath House Farmhouse*

3.4 The application covers the property edged red on the attached plan (see Appendix 2). The existing owners and occupiers have used the property as described for a period of well over 10 years this constitutes a lawful use.

3.5 The historic photographs at Appendix 3 show the existing use. We have also interrogated historic aerial photography.

3.6 In terms of the relevant planning history, there is limited history listed on the local authority website and nothing relating to the garden land associated with the farm house.

The application is accompanied by two statutory declarations, one from Mr Arthur Doherty and one from Mrs Susan Doherty. The declarations provide the following information:-

- Have resided at the property known as Heath House Farm since 1994 with family;
- The land used as garden is shown as edged red on the submitted plans;
- Property has been used as a family home for over 30 years.
- Original garden was around the house but after moving in the land to the south-west was used as additional garden.
- A new hedge was planted along the north-west boundary of the land and new ornamental trees and shrubs were planted. The grass was seeded as a new lawn and mown weekly as shown on aerial photographs which show the land continuing to be used as garden space.
- Land is also used for the siting of the borehole pumping shed and associated hardstanding which supplies fresh water. This has been erected for over 10 years which is proved by aerial photography.
- Land subject to the certificate of lawful use application has been used as residential garden land for 30 years.

The Planning Statement also includes a series of photographs which show the application land in use.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Not relevant in the case of a Certificate of Proposed Lawful Use/Development.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

Lots of planning history relating to the wider Heath House estate however nothing relating to the area of land specified within this application apart from the following;

SMD/2015/0044	Certificate of lawfulness for a proposed pump/storage room. Withdrawn application.
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CONSULTATIONS

Publicity

There is no statutory requirement to consult third parties on applications such as this, however a site notice has been displayed, and neighbours and the Parish Council notified. It is noted that any representations regarding the planning merits (or otherwise) of the application cannot be considered as this application is to be determined based on whether the proposal is lawful.

Site Notice. Expired.

Neighbour consultation period. Expired

Public Comments

No representations received.

Forsbrook Parish Council

No representations received.

OFFICER COMMENTS

The application is submitted under s.191 of the Town and Country Planning Act 1990 (as amended) for a certificate of lawfulness. If any person wishes to ascertain whether any operations which have been carried out are lawful then they may make an application for the purpose. For the purposes of the Act operations are lawful at any time if no enforcement action could be taken in respect of them (whether because the Planning Authority is out of time to take enforcement action, or for any other reason).

The application seems a little unclear about what is being sought. The application description infers to be seeking Local Planning Authority (LPA) agreement that land which has been used as garden land, forms part of the domestic curtilage, whereas the Planning Statement informs this is an application to Staffordshire Moorlands District Council for the 'use of land around Heath House Farm for garden and amenity land.'

Whether or not the application land is domestic curtilage.

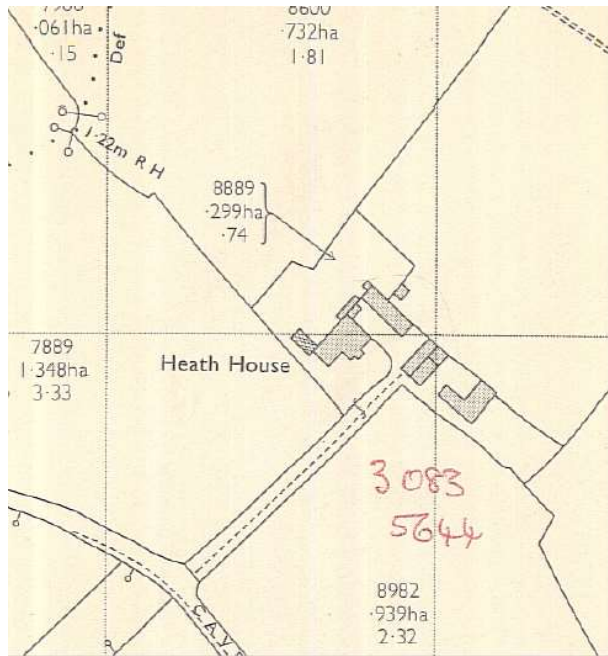
Whether land is domestic curtilage is different from whether land has been used as garden/amenity land. For the purposes of clarity, this application is not seeking acceptance of the timber shed and the base upon which it sits.

The concept of 'curtilage' for the purposes of the General Permitted Development Order (GPDO) was reviewed by the High Court in *Burford v SSCLG* [2017] J.P.L. 1300 at [32]–[37] per Supperstone J. The judge summarised the relevant factors for determining the curtilage as: (1) the physical layout of the building and the structure; (2) their ownership, past and present; (3) their use or function, past and present. The application of those factors to a given set of facts is a matter of planning judgment for the decision taker.

In *McAlpine v Secretary of State for the Environment* [1994] E.G.C.S 189 from a study of the authorities, the Court identified three relevant characteristics of a curtilage – (a) it was confined to a small area about the building; (b) an intimate association with land that was undoubtedly within the curtilage was required in order to make the land under consideration part and parcel of that undoubtedly curtilage land; and (c) physical enclosure is not necessary.

The relationship between the main dwelling and the land in question which was relevant when considering function and/or use, *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.1)* [2001] Q.B. 59, [2000] 2 WLUK 950 applied. Determining the curtilage was a question of fact and degree: "curtilage" connoted a building or piece of land attached to a dwelling house and forming one enclosure with it: it was not restricted in size but had to be fairly described as being part of the enclosure of the house to which it referred, *Lowe v First Secretary of State*.

Below is a snapshot of an Ordnance Survey map which shows the application site in relation to its surroundings, including the Heath House Farm dwelling to the north-east.



The following photographs show the evolution of the site with the final photograph being the most recently taken. The blue circle shown in the photographs is the land to which this application relates.





Taking into account established case law and the OS and aerial photo extracts above, it is clear that the land in question did not originally form part of the Heath House domestic curtilage, rather it was a piece of agricultural land which has been used in connection with the dwelling. Both of the statutory declarations confirm this to be the case in that they state the 'the original garden was around the house but after moving into the property we started to use the land to the south-west as additional garden.'

The Planning Statement does not make any reference to the desire to develop the site in any way, however it is fact that the domestic permitted development rights are available (unless specifically removed) for use within domestic curtilage land. Domestic permitted development rights do not apply to the land in question as it is not domestic curtilage.

Whether the land is a 'garden' and can lawfully be used as such

The use of the land as a "garden" would be more precise in reflecting the use of the land put forward by the applicants.

The term 'garden' is not recognised, defined or referred to within the Act but is identified within dictionary definitions as land (often including grass), which is usually enclosed and within which flowers, vegetables and other plants can be cultivated. From the information available within the submission, the site visit, the character and appearance of the land, including mown lawn, planting, and aerial photography, it is agreed that the land can reasonably be described as garden and has been used as such.

It is noted that the term 'horticulture' has a very similar meaning to the term garden in that it relates to the cultivation of a garden and the practice of growing plants. This has certainly occurred within the application site, and photographs (including aerials) show the addition of hedgerow and individual trees and shrubs. Indeed, this has been acknowledged within both statutory declarations. The similarities between the terms 'garden' and 'horticulture' are extremely relevant in this case. There is no doubt that the land was originally within agricultural use. In accordance with the interpretations set out within section 336 of the Town and Country Planning Act, the term 'agriculture' is defined as follows;

'Agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.'

The use of the land as garden, is not in fact a material change of use which would require planning consent, nor would it be necessary to demonstrate 10 years' worth of continuous use. Photographs contained within the Planning Statement show some general use including mowing the lawn, playing football and the positioning of removeable children's play equipment, none of which would constitute development in its own right. The claim that the land is used as 'garden' is therefore accepted.

CONCLUSION / PLANNING BALANCE

It is concluded that the application land does not form part of the domestic 'curtilage' of Heath House Farm, Caverswall Old Road, and would therefore not benefit from domestic permitted development rights. It is agreed that the land could be described as garden/amenity land as it would appear that a material change of use has not occurred.

OFFICER RECOMMENDATION :

Approve the certificate in so far that the land can be described as garden/amenity land, but not domestic curtilage. This results in a change in the original application description.

Case Officer: Lisa Jackson

Recommendation Date: 30.03.2026.

X 

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council