HUNTINGDONSHIRE DISTRICT COUNCIL

24/02299/CLED

OFFICER REPORT

Case No: **24/02299/CLED** **Certificate of existing lawful use**

Proposal: **Certificate of lawful use for the use of land for purposes incidental to the use of the dwellinghouse.**

Location: **21 Church Road Great Stukeley Huntingdon**

Applicant: **Andrew and Larisa Greenland**

Grid Ref: **521662 274515**

DESCRIPTION OF SITE AND APPLICATION

This application seeks a Lawful Existing Development Certificate for use of the land to the northwest, west and south of 21 Church Road (Moat House) Great Stukeley as incidental to the use of the dwellinghouse for more than 10 years.

The applicants state that the aforementioned land outlined in red on the accompanying plan to the application has been used incidentally to the dwellinghouse continuously in excess of 10 years. Therefore, the applicant seeks a certificate of lawful existing development to demonstrate that the land to the northwest, west and south of 21 Church Road (Moat House) Great Stukeley should be classed as immune from formal planning enforcement action and considered lawful through the passage of time. The application was submitted on 9th December 2024 and therefore the relevant time period to be considered is from the 9th of December 2014.

RELEVANT PLANNING HISTORY

24/01734/FUL - Demolition of existing dwelling and outbuildings and erection of replacement self-build dwelling and associated development - Permission - 30.01.2025
24/01611/CLED - Certificate of lawful use for the use of land for purposes incidental to the use of the dwellinghouse - Refused - 22.11.2024
24/01010/FUL - Demolition of existing dwelling and outbuildings and erection of replacement self-build dwelling and associated development - REFUSED
24/01009/FUL - Erection of self-build dwelling and associated development - REFUSED
17/02355/HHFUL - Erection of an oak framed garden room - PERMISSION

CONSULTATIONS/ REPRESENTATIONS

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a LPA to seek evidence from these sources, if there is good rea-son to believe they may possess relevant information about the content of a specific application. In this case it was considered reasonable to consult the local Parish Council for evidential purposes.

The Stukeleys Parish Council comment "Stukeley PC support this application, this planning app with accompanied documentation makes it evident that the area in question has been used for non-agricultural use for many years and has been developed thoughtfully for domestic use."

ASSESSMENT

The planning merits are not for consideration in this case as this application is determined solely on the basis of whether the breach of planning control is now immune from enforcement action due to the passage of time. The applicant has to demonstrate, on the balance of probability that the claimed domestic use of the land to the northwest, west and south of 21 Church Road (Moat House) Great Stukeley has been continuously used for 10 years.

Current guidance on applications for Certificates of Lawfulness of Existing Use or Development is set out in the Governments Planning Practice Guidance.

A local planning authority can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of af-fairs on the land at the date of the certificate application.

Relevant parts of the Town and Country Planning Act 1990 are as follows:

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Section 171B(3) imposes a 10-year time limit where there has been a breach of planning control other than those detailed in 171B (1) or 171B (2), no enforcement action may be taken after the end of the period.

The test is the balance of probability. Regard cannot be given to any objections to this application on planning grounds or previous planning decisions. The determination of this application turns on the facts of the case and their interpretation in the light of relevant planning law and judicial authority.

The application is submitted with the following evidence;

1) Cover Letter

The cover letter details the additional evidence submitted to address the previous reasons for refusal. Which are summarised below.

2) Statement of Truth/ Supporting Statements - Evidence of use as a garden - Part 1 and 2

The application is accompanied by the following statements of truth/ supporting statements, summarised below.

a) A statement of truth accompanies the planning statement as Appendix A from Jane Lesley Utting, the former owner of 21 Church Road (Moat House) dated 4th May 2023, signed but not witnessed but accompanied by a solicitor's letter.

In summary the declaration states that

- Ms Jane Lesley Utting states that at the time of the statement lived at the land edged in red as indicated by an accompanying plan.
- Ms Jane Lesley Utting identifies that the land edged in red attached to the statement of truth has since 9th December 2005 been in her ownership and has been used as

ancillary to the residential use of the dwelling and for the sole benefit and enjoyment of the owners of the property.

b) A supporting statement from Ms Hazel Harlow, a neighbour, dated 27th November 2024, signed, and witnessed.

In summary the declaration states that
- Ms Harlow is a friend of the former owner Ms Jane Utting.
- Ms Harlow states that she used to walk her dog around the whole garden including down to the southern boundary.
- Ms Harlow states Ms Utting spent a considerable amount of time in the gardens
- The gardens to the South, the west, and the orchard to the west of the moat house were put in before 2010.

c) A sworn statement from Mr John Greenland, dated 2nd December 2025, signed, and witnessed.

In summary the sworn declaration states that
- Mr Greenland met the landscape gardener Mr John Childs on Tuesday 26th November.
- Mr Greenland stated that Mr Childs walked him through the gardens and gave Mr Greenland and overview of the works he had completed. Mr Greenland summarises the conversation as follows;
  *Mr Childs has worked as gardener at Moat house from 2006 to May 30th 2023.
  *Mr Childs designed and planted areas to the south, southwest, and the orchard to the northwest of the property consisting of native trees, shrubs roses and no native plants.
  *Soil condition was poor, and mulching required
  *The orchard to the northwest was planted before 2008. The gardens including trees to the south were planted in 2009.
  * Mr Childs states he did not install the pond but in approximately 2009 installed a top up and anti-wicking system.
  *Mr child's stated that he designed and planted the white garden in 2018.
  * Mr child's stated that maintained boundary fencing
  * Mr child's stated that he and his son maintained the garden by cutting grass, pruning trees and bushes, and maintaining hedges and fencing.

d) A statement from Mr Dean Sibley dated 25th November 2024 and signed but not witnessed.

In summary the statement states that
*Mr Sibley surveyed Moat House on 17th February 2023.
*Mr Sibley attaches section D3 of his report at the time which highlights extensive front and rear gardens which are maintained and that it was clear for some time due to the maturity of the gardens.
*Mr Sibley states there was no evidence of the land being in use agriculturally.

e) A sworn statement from Mr Andrew Greenland, the owner, dated 2nd December 2024, signed, and witnessed.

In summary the statement states that
*Mr Greenland purchased Moat House on 30th May 2023.
*Since 30th May 2023 Mr Greenland has maintained and enjoyed the full gardens in the property referring to the land edged in red on an attached exhibit.
*Mr Greenland has held several BBQ in the gardens since date of purchase.
*The use of the garden is continuous and ongoing

*Mr Greenland is not employed in agriculture and his ownership in the land has never been part of an agricultural holding.

f) A sworn statement from Ms Larysa Greenland, the owner, dated 2nd December 2024, signed, and witnessed.

In summary the statement states that
*Ms Greenland purchased Moat House on 30th May 2023.
*Since 30th May 2023 Ms Greenland has maintained and enjoyed the full gardens in the property referring to the land edged in red on an attached exhibit.
*Ms Greenland has held several BBQ in the gardens since date of purchase.
*The use of the garden is continuous and ongoing
*Ms Greenland is not employed in agriculture and her ownership in the land has never been part of an agricultural holding.

3) Changes to the Moat House Summary - Evidence of use as a garden - Part 3.1

The summary includes reference to a major house remodelling in 2006 under 0600185FUL including a link between the garage and old house forming a garden room with extensive views of the garden. This is accompanied by 3 photos (undated or geostamped) showing the dwelling and a garden. The summary also includes reference to the 2018 oak framed conservatory including an extract from the design and access statement referring to the gardens. Finally, the summary details a "Breeze House" installed on 6th July 2015 with a photo showing orientation dated 17th March 2023 and geostamped to the approximate site. Also included is a photo of a certificate of authenticity dated 6th July 2015.

4) Changes to the Moat House Summary - Evidence of use as a garden - Part 3.2

This document includes photos (undated) of the application site annotated with changes made to the dwelling. The document includes various photos of what appears to be the site garden area (although not geostamped) that are claimed to have been taken in December 2013 when tree surgery was being completed.

5) Changes to the Pond Summary - Evidence of use as a garden - Part 4

This document details the timeline of the ornamental pond on site stating it was excavated in November 2009 and includes a floating platform installed by the previous owner in approximately 2012. A floating island is also present that moved between aerial photos taken in 2014 and 2019. The pond is home to an extensive Koi Carp collection. The previous owner had a boat on the moor-ing visible in satellite photos.

The documents include undated pictures of the pond excavation claimed to be taken in Nov 2009.

Also included in the document are various photos dated between 12th Nov 2023 15th Nov 2024 geo-stamped to the location showing the pond and maintained grassland in the background.

6) General Garden Information and Photos - Evidence of use as a garden - Part 5

This document contains the following

- Invoice from Dellows Ponds addressed to Mr Greenland at 21 Church Close, Great Stukeley dated 15th February 2024.
- Photo of pond dated 15th February 2024 geostamped at the site location.

- Communications regarding the pond between Mr Greenland and Dellows Ponds dated February 2024.
- Photo of pond dated 16th February 2024 geostamped at the site location.
- Screenshots of order details for garden equipment dated 4th June 2023 and 22nd July 2023
- Photo of Jam claimed to have been made from fruit at the site. Jam is dated 2023.
- Extracts from arboricultural report detailing trees on site on 27th October 2023 matching the types of fruit made into jam.
- Photos dated 3rd June 2023, 4th February 2024, and 15th November 2024 detailing "The White Garden" established in 2018 planted by Mr John Childs.
- Photo dated 15th November 2024 and geostamped showing a domestic gate into a well-maintained garden area.
- Photo dated 6th September 2023 and geostamped showing the laid patio steps into the lawned garden. The document states this entrance is visible on satellite photos going back to earlier than 2008.
- Photo dated 15th November 2024 and geostamped showing an open entrance with pergola into an accessible area of mature planted trees.
- Photo dated 17th March 2023 and geostamped showing an open entrance with steps into an open grass area.
- Photos of gates into agricultural field
- Photo dated 15th November 2024 showing tree guard grown out of mature tree.
- Photo dated 15th November 2024 and geostamped detailed as showing wild animals eat tree bark so most of the planted trees have had some sort of deer/rabbit protection. A selection of photos showing old and new fencing and deer protection.
- Aerial Images from 2014 and 2019, 2020, 2021 and 2022 with the applicant stating "the gardens have been set to grass with tree planting areas. Between the trees two areas have been allowed to grow wild with no maintenance, the rest of the gardens have been maintained. There are several maintained grass walkways through the gardens. These are clearly visible from the 16.4.14 satellite photograph through to the present day. The photo has been marked up to show the walkways. Note that not all are visible due to the shading."
- Undated or geo stamped photo labelled drone shot from estate sales brochure.

7) Summary and Timelines - Evidence of use as a garden - Part 6-7

This document summarises the evidence submitted and detailed above, which includes a visual timeline showing where evidence submitted covers the relevant time period.

Photos dated and geostamped at the application site from 3rd June 2023 to date.

SUMMARY OF ISSUES

The onus of proof in a CLED application is on the applicant, who must prove their claim 'on the balance of probabilities' (not the stricter criminal test of 'beyond reasonable doubt').

Paragraph 006 of the Planning Practice Guidance states that 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.

The main issue is whether, on the balance of probabilities, the breach of planning control for the domestic use of the land northwest, west and south of 21 Church Road (Moat House) Great Stukeley for more than 10 years before the date of the application and has continued over that period. If so, the breach of planning control has succeeded in being immune from enforcement action by the Local Planning Authority.

The submitted evidence relies on aerial photos, sworn and unsworn statements, previous planning applications, photos, and invoices.

Aerial Photos

The aerial images submitted seek to demonstrate that the land edged in red has been used as residential land incidental to the enjoyment of the dwellinghouse. The images are still considered to provide a snapshot in time of landscape changes to the land edged in red.

This application submits further photos that are electronically dated, and geo stamped that cover a period of time between 17th March 2023 (Breeze House photo) and 15th November 2024. The photos covering this period can be afforded considerable weight due to their dates and location stamps. Therefore, in terms of photo evidence the period of time from 17th March 2023 to 15th Nov is on the balance of probability sufficient to evidence residential use.

In terms of aerial photos, whilst they form part of a jigsaw of evidence, alone are afforded little weight as they still only offer a snapshot in time and do not demonstrate a continuous use of the area edged in red residentially.

Statement of Truth/ Supporting statements

The previous statement of truth provided by the previous owner covering 9th December 2005 to 4th May 2023 was given little weight as it was not witnessed. This has now been accompanied by a solicitor's letter, allowing the statement to carry more weight.

The application is now accompanied by signed and witnessed statement from Ms Harlow which supports the planting and garden use since 2010, a signed and witnessed statement from the own-er regarding a conversation with the previous gardener Mr Childs which supports a residential gar-den use since 2009 and two signed and witnessed statements from the owners regarding residential use of the garden since May 2023 to date. These are afforded greater weight.

There is a further statement from a surveyor, but this is not witnessed and therefore afforded little weight.

Previous Planning Permissions

The application details that the previous planning permission 17/02355/HHFUL for an oak framed garden room attached to the residential dwelling, supports the use of the land edged in red as residential. However, it is the view of the council that this does not provide sufficient and unambiguous evidence of the land edged in red having been used as residential incidental to the enjoyment of the dwellinghouse continuously for in excess of 10 years.

Other evidence
The application includes further evidence of works to the pond and invoices for garden equipment between May 2023 and Feb 2024. These provide additional supporting evidence to the dated photos and statement of truth for the period of time that the site has been in the ownership of the current owner.

CONCLUSION

Taking into account the entirety of the evidence submitted by the applicant and assessed on 'the balance of probabilities' (not the stricter criminal test of 'beyond reasonable doubt) the application now demonstrates that domestic use of the land northwest, west and south of 21 Church Road (Moat House) Great Stukeley has occurred continuously for a period of 10 years.

Additional sworn statements, photographs that are dated and geo stamped, now form a complete jigsaw of evidence that demonstrates the residential use of the site edged in red. In addition, the council hold no evidence nor have received any evidence that would suggest that the applicant claim is less than probable.

The application is submitted under Section 191 of the Town and Country Planning Act, as amend-ed. It seeks to demonstrate that the planning unit edged in red on the plan attached to the application has been occupied continuously for a period in excess of 10 years for domestic garden use.

Officers have assessed the evidence submitted as listed above, alongside records held by the local authority. The LPA consider that the 10-year period of occupancy between the 9th of December 2014 and the 9th of December 2024 has been sufficiently evidenced.

Therefore, the evidence submitted on the balance of probabilities supports the continued residential use of the land edged in red for a period in excess of 10 years.

It is therefore recommended that the Certificate for the lawful existing use of the land northwest, west and south of 21 Church Road (Moat House) Great Stukeley within the red line map attached is granted.

If you would like a translation of this document, a large text version or an audio version, please contact us on 01480 388424 and we will try to accommodate your needs.

CONTACT OFFICER:
Enquiries about this report to **Andrea Dollard**