HUNTINGDONSHIRE DISTRICT COUNCIL

25/01031/CLED

OFFICER REPORT

Case No: **25/01031/CLED** **Certificate of existing lawful use**

Proposal: **Certificate of lawful existing development for the regularisation of the incidental use of outbuildings for a period of ten years**

Location: **Land At Westfield Farm Great North Road Buckden**

Applicant: **Mr Darren Coote**

Grid Ref: **518639 266991**

DESCRIPTION OF SITE AND APPLICATION

The application is for a Lawful Development Certificate for the regularisation of the use of outbuildings at Westfield Farm, Great North Road, Buckden, for ancillary purposes to the residential property.

The site is situated on the west side of the settlement of Buckden, on the west side of Great North Road (A1). The buildings in question are located east of the main dwellinghouse and comprise of an agricultural building (Building A), a garage block (Building B), a storeroom (Building C) and a stable block (Building D).

The supporting information consists of:

- Planning Statement;
- Signed declaration from the applicant;
- Signed declaration from a local carpenter who completed building works on the application site dwelling and business associate of the applicant;
- Photographs.

NATIONAL GUIDANCE

The National Planning Policy Framework (2024).
Planning Practice Guidance.

PLANNING POLICIES

Not relevant

LEGISLATION

- Section 171B of the Town and Country Planning Act 1990 - Time Limits
- Section 191 of the Town and Country Planning Act 1990 - Certificate of Lawfulness of existing use or development
- Section 10 of the Planning and Compensation Act 1991

Section 191 of the Town and Country Planning Act 1990 - Subject to evidence provided by the Applicant and pursuant to Section 191 of the Town & Country Planning Action 1990 a Local Planning Authority has the power to grant a certificate of Lawful Development confirming that either or (a) any existing use of buildings or other land is lawful, (b) any operations which have

been carried out in, on, over or under land are lawful; (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.

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 affairs on the land at the date of the certificate application.

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 of the Town and Country Planning Act 1990 - Time Limits

Section 10 of the Planning and Compensation Act 1991 - The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control. The time limits are:

- Four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially complete;

- Four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken: and

- 10 years for all other development. The 10-year period runs from the date the breach of planning control was committed.

Applications must be accompanied by sufficient factual information/evidence for the local planning authority to decide the application. An application must describe precisely what is being applied for (not simply the use class) and the land to which the application relates.
The applicant is responsible for providing sufficient information to support an application. The local planning authority is entitled to canvass evidence before determining an application.

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.

Details of what must be included in each type of lawful development certificate can be found in section 191(5) or 192(3) of the Act.

A certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "sui generis" use); and where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.

Previous guidance Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements (Annex 8) drew attention to the case of F W Gabbitas v SSE and Newham LBC [1985] JPL 630) in which it was found that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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 LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application

The onus of proof in a CLEUD application is on the applicant, who must prove their claim 'on the balance of probabilities' (not the stricter criminal test of 'beyond reasonable doubt'). If the LPA has no evidence of its own, or 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.

RELEVANT PLANNING HISTORY

23/02476/PIP - Residential redevelopment with 3-5 dwellings following demolition of existing building - Refused and later allowed at appeal (APP/H0520/W/24/3344269).

1201670FUL - Retention of cladding to agricultural outbuilding - Approved

1000355FUL - Demolition of existing dwelling and erection of replacement dwelling with associated residential curtilage works (including hardstanding, gates and planting) - Approved

CONSULTATIONS

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 reason 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.

Buckden Parish Council - Agreed to neither recommend approval nor refusal. Comment in association with residential property but not with their building business if granted suggested to exclude commercial use. Advised for the Enforcement team to inspect for commercial uses.

REPRESENTATIONS

No third-party representations were received during the course of the application.

SUMMARY OF ISSUES

The issue to consider:

Whether the development is considered lawful existing development taking into consideration the evidence submitted and is therefore immune from any enforcement action. This application is for the regularisation of the incidental use of outbuildings associated with Westfield Farm, Great North Road, Buckden without interruption for a period of ten years.

ASSESSMENT

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 signed declaration by the applicant states that they purchased the property in 2009 and subsequently submitted and obtained planning permission to replace the existing dwelling house (reference 1000355FUL). In 2011 the applicant re-clad the agricultural barn (Building A) and retrospectively obtained planning permission (reference 1201670FUL) for the retention of the cladding "so it could be securely used for ancillary residential use alongside a small storeroom, garage and former stable block." However, it is worth noting that under Section 15 of the submitted application form for the application, the applicant explicitly states that no change of use has occurred or is proposed to occur. Furthermore, an amendment was agreed to be made to the description of development during the course of the application from 'Retention of cladding to outbuildings' to 'Retention of cladding to agricultural outbuilding'.

The applicant claims that the former agricultural barn (Building A) has been used for ancillary residential storage for almost 14 years - "including storage of wood for home fuel, personal motor cars, a tractor, cutting equipment for managing the paddock land within site ownership, and tools, equipment works truck and temporary materials in association with my building business.". It is claimed that the garage block (Building B) has been used "for car storage, additional freezer space, camping equipment, garden furniture, and breeding and feed for pets.". With regard to the small store (Building C) it is claimed to have been used for "rearing chickens. The family has consumed the eggs produced by the chickens.". Furthermore, the former stable block (Building D) is claimed to have been used "by the family as a home gym and storage of excess furniture.".

The Local Planning Authority are satisfied that the uses listed would be considered ancillary to the enjoyment of a residential dwelling - subject to the extent of storage of materials in associated with the applicant's building business.

The second signed declaration, by the local carpenter and business associate to the applicant, also claims the buildings in question have been used by the applicant for 10 years or more for the purposes detailed within the applicant's declaration.

The submitted Planning Statement states that in relation to planning application 23/02476/PIP and subsequent appeal, "the Applicant's Planning Statement and Appeal Statement stated that the existing buildings have been used for incidental purposes in association with the residential property. The Council's Officer Report and Planning Inspectorate's Appeal Decision both do not dispute that the buildings have been used for these stated used."

However, in response to this, the site description provided within the officer's report of planning application 23/02476/PIP includes "a three-bay steel frame storage building with an attached flat-roofed store, a garage block and an L-shaped stable block". Furthermore, the report goes on to state that "the site comprises agricultural buildings, including stables, a storage barn with garages".

It is also worth noting that within appeal decision reference number APP/H0520/W/24/3344269 paragraph 10 states "It comprises of one residential dwelling and multiple agricultural buildings" and paragraph 14 states "The appeal site forms part of the land associated with Westfield Farm. The existing buildings are large and agricultural in character".

Accordingly, neither the Local Planning Authority, nor the Planning Inspectorate recognised the application buildings as being ancillary to the residential property of Westfield Farm with both noting their agricultural nature.

The application is accompanied by a series of photographs that show the inside of the application buildings. The majority of the images show the buildings to be used for storage - including vehicles, gym equipment, household white goods, wood, garden furniture. However, notwithstanding the contents, the submitted photographs are not date stamped and therefore do not contribute to demonstrating the use of the identified buildings for a continuous period of at least 10 years.

Overall, the application is not considered to be accompanied by sufficient factual information/evidence to demonstrate that the buildings have been used for purposes ancillary the dwellinghouse without interruption for a period of more than 10 years.

CONCLUSION

The application is submitted under Section 191 of the Town and Country Planning Act, as amended. It seeks to demonstrate the use of outbuildings at Westfield Farm for uses incidental to the residential dwelling, for a continuous period of 10 years or more.

The application has been accompanied by inadequate evidence to demonstrate, on the balance of probabilities, that the buildings in question have been used for purposes ancillary to the enjoyment of the residential dwelling for a continuous period of 10 years or more. Furthermore, details within the historic planning application to re-clad the agricultural building are contrary to what is being claimed by the applicant within their signed declaration.

The use is not considered to be permitted development and therefore requires the applicant to submit a full planning application to seek permission.

It is therefore recommended that the Certificate is refused.

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CONTACT OFFICER:
Enquiries about this report to **Jennifer Wallis**