

PLANNING APPLICATION REPORT

Case Officer: Bryony Hanlon

Parish: Woodleigh **Ward:** Loddiswell and Aveton Gifford

Application No: 3176/22/CLE

Agent:

Mr Russell Thomas
Rendells
Stonepark
Ashburton
TQ13 7RH

Applicant:

Mr & Mrs Reeve
Little Wotton
Woodleigh
Kingsbridge
TQ7 4DP

Site Address: Little Wotton, Woodleigh, Kingsbridge, TQ7 4DP

Development: Certificate of lawfulness for mixed use of land for agriculture and rearing/keeping of game birds.

Recommendation: Certificate of lawfulness granted

Key issues for consideration:

Whether, on the available evidence, on the balance of probabilities, the use has been carried out for ten years and is therefore exempt from enforcement action under S171B(3) of The Town and Country Planning Act 1990 (as amended); or whether there is conflicting evidence to outweigh the submitted evidence in support of the application, sufficient such that, on the balance of probabilities, the appropriate ten year period has not been proven.

Site Description:

The site is located within the open countryside, c. 1.7km north of Woodleigh. The site falls within the South Devon Area of Outstanding Natural Beauty.

The site is accessed from the east via a Class Z road from Lowerdale Turn to Lower Preston Cross and comprises fields adjacent to the dwelling of Little Wotton.

The Proposal:

The applicant seeks the grant of a lawful development certificate to confirm that the land has been used for agriculture and rearing/keeping of game birds since 2007. It is noted that the Google images supplied with the application include activity on land beyond the application site boundary; for clarity, this land is excluded from the assessment.

Consultations:

- County Highways Authority No highways implication
- Natural England (original comment) Insufficient information available to comment
- Natural England (revised comment) No comments
- Parish Council No comments received

Representations:

Representations from Residents

Two letters of support have been received and include the following points:

- I first visited Little Wotton in February 2013 when looking for a house to buy. I actually purchased the house I live in, Crosspark, in May 2013.

- Little Wotton was most definitely being used for the rearing and keeping of game birds at that time and ever since. Indeed, I have helped the owners with their business since moving into my property.
- It was certainly my understanding, even in 2013, that the business of rearing and keeping game birds had been going on for many years previously.
- I'm very surprised this has become an issue after all this time.

Relevant Planning History

Planning Application Reference	Proposal	Site Address	Decision
61/1756/93/3: FUL	Erection of agricultural building	Little Wotton Woodleigh.	Conditional approval: 04 Jan 94
61/0835/97/3: FUL	Removal of condition (a) of permission SX/623 for farm bungalow (agricultural tie)	O.S. 1853 Wotton Bungalow Woodleigh.	Conditional approval: 26 Jun 97
61/0700/07/AG : AGR	Resubmission of application 61/0305/07/AG for the relocation of agricultural storage building	Little Wotton Woodleigh Kingsbridge TQ7 4DP	Ag Detmn - details not required: 26 Apr 07

ANALYSIS

The usual material planning considerations relating to matters such as Development Plan Policy and other Guidance, the principle of development/ sustainability, design /landscape, neighbour amenity and highways/ access issues do not fall to be considered under an application for a Certificate of Lawfulness of existing use or development.

The decision is based upon 'the balance of probabilities' and rests on the evidence submitted, the facts of the case and any relevant planning law and takes into account the facts presented and any contrary evidence if available.

Section 191 of the Town & Country Planning Act 1990 (as amended) [hereafter referred to as The 1990 Act] allows for any person who wishes to ascertain whether any existing use of buildings or other land is lawful; any operations which have been carried out in, on, over or under land are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, to make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

The Certificate is sought on the basis that the stated land use has continued for more than ten years and is therefore exempt from enforcement action.

Considerations

When considering an application for a Certificate, the onus lies with the applicant to supply supporting documentary evidence.

Having regard to advice contained within Planning Practice Guidance under 'Lawful Development Certificates' it is accepted that the onus of proof is firmly on the applicant where the applicant is responsible for providing sufficient information to support an application.

Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC [1985] JPL 630*) 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 application is supported by a detailed statement setting out the use of the site, along with historic Google aerial photographs dating back to 2010 and current photographs of the site. The applicant has also supplied a number of other documents to support the use of the site; these documents include diary entries, receipts for feed, bedding, fuel and equipment, along with purchase orders and invoices for game birds.

The Council has no evidence of its own to contradict that of the Applicant and there are also comments from third parties supporting the applicant's statement. It is noted that the South Hams Society have challenged the applicant's statement on the basis that the aerial images on their own do not sufficiently demonstrate continuous use of the land as stated. Officers acknowledge these comments but would confirm that the range of other financial information provided with the application does confirm continuous use of the land as stated over the required ten year period. Due to its financial nature, this information was not publically available and therefore the South Hams Society were not able to take this into account when formulating their representation.

It is therefore concluded that sufficient evidence has been provided in this case to satisfactorily demonstrate the claimed occupancy of the dwelling and therefore a Certificate of Lawfulness should be granted on that basis.

This application has been considered in accordance with The Town and Country Planning Act 1990 (as amended).

Planning Policy

This application is a legal determination and planning policy and planning merits cannot be taken into account.

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

The above report has been checked and the plan numbers are correct in APP and the officers report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature: B. Hanlon

Date: 13 December 2022