

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	NH	29/11/2019
Planning Development Manager authorisation:	TF	29/11/2019
Admin checks / despatch completed	X10	29/11/19
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ER	29/11/19

Application: 19/01034/LUEX **Town / Parish:** Great Oakley Parish Council
Applicant: Ms Rose Couchman
Address: Sisters Cottage Colchester Road Great Oakley
Development: Use of land as garden.

1. Town / Parish Council

Great Oakley Parish Council have not commented on this application.

2. Consultation Responses

Not applicable

3. Planning History

92/00892/FUL	Two storey extension	Approved	14.10.1992
93/00196/FUL	Variation in design to approved extension No. TEN/92/0892 - enlargement of rear extension	Approved	31.03.1993
03/01436/FUL	Proposed rear extension to form new porch. Re-submission of application TEN/02/01261	Approved	09.09.2003
11/01007/LUEX	Lawful Existing Use Certificate for continued use of land as garden opposite house.	Lawful Use Certificate Refused	21.11.2011
12/00485/LUEX	Lawful Existing Use Certificate for continued use of land as garden opposite house.	Lawful Use Certificate Granted	24.08.2012
12/60469/HOUEN Q	Outbuilding for leisure purposes in garden	Permission Required	24.10.2012
16/01118/FUL	Demolition of old stable block and re-build on same site for housing of garden equipment and wood store.	Approved	05.09.2016

4. Relevant Policies / Government Guidance

Not Applicable

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

5. Officer Appraisal (including Site Description and Proposal)

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:

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

Once these time limits have passed, the development becomes lawful, in terms of planning.

Subsection (1) of section 191 provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes

Applications for Lawful Development Certificates should include the following information:

- o whether the application relates to:
- o a use
- o a building operation

- o a condition not complied with
- o the date that the use started
- o any use class the applicant considers to be applicable
- o the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- o any other relevant information
- o a plan identifying the land
- o a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person

Question 7 of the application form submitted on 10th July 2019 confirms that the application relates to a use.

Question 10 of the application form submitted on 10th July 2019 confirms that the use begun pre 2000.

Question 3 of the application form submitted on 10th July 2019 confirms that the application relates to 'Longlands', Westend section - land opposite the address above.

Question 9 of the application form submitted on 10th July 2019 confirms that the grounds for the Lawful Development Certificate are that the use began more than 10 years before the date of the application

A Land Registry plan, title number EX461548, identifies the land to which the application relates.

Question 5 of the application form submitted on 10th July 2019 confirms that the applicant's interest in the land is as the owner

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

- o proof that any use has been carried on continuously for a period of 10 years

The following evidence has been submitted in support of the LDC:-

Identity	Type of Evidence	Date
Tina Starling	Letter from previous owner	10 th July 2019
Marion Smith	Letter from neighbour	20th September 2011
Mr and Mrs J I Hardwick	Conveyance document	1 st March 1977
P V Carroll	Conveyance document	21 st April 1978
Charles Church East Anglia Limited	Conveyance document	29 th November 1989
Mr T Starling	Decision Notice 12/00485/LUEX	16 th August 2012
Rose Couchman	Photographs	16 th May 2016, 17 th October 2016, 21 st January 2017, 30 th January 2017 3 rd July 2019.
Thomas Starling	Email from previous owner	6 th October 2019
Inspector Graham Bailey	Planning Article	21 st September 2017

Section 191 of the Town and Country Planning Act 1990 is the relevant section when dealing with issues of Certificates of Lawful Use or Development. Section 191 (1) (a) states that the use will be lawful if no enforcement action or Breach of Condition Notice could be served and, that the use or development does not constitute a contravention of any of the requirements of any Enforcement Notice then extant. In this case there is no record of an Enforcement Notice in respect of this property.

Circular 10/97 'Enforcing Planning Control - legislative provisions and procedural requirements' states that if a certificate is for a use of land - unless the use falls within one of the "use classes" specified in the Use Classes Order (UCO) current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers, lawfulness on the use it is important for it

to state the limits of the use at a particular date. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects.

By virtue of section 191(5)(b), a LDC 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" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously.

This Certificate relates to the western part of land owned by Sisters Cottage. The case made by the applicant is that this land was always part of the garden area of Sisters Cottage. Although excluded from the certificate of Lawfulness approved by Tendring District Council in 2011, the piece of land should have been included. In this case, the applicant has provided credible evidence as listed above. In these circumstances, the evidence given shows that the claimed use has existed over 10 years and therefore a case is made for granting a Lawful Development Certificate.

6. Recommendation

Lawful Use Certificate Granted

7. Conditions / Reasons for Refusal

- 1 The Local Planning Authority is satisfied that on the balance of probability, the use described in the First Schedule has taken place for a continuous period of at least ten years prior to the date of this application and that a Certificate of Lawful Existing Use should therefore be granted in accordance with Section 191 of the Town and Country Planning Act 1990. The use of the land as noted below is immune from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended) and is now considered to be lawful.

8. Informatives

Not Applicable

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO