

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	AC	14 th Sept 2022
Planning Development Manager authorisation:	AN	15/9/22
Admin checks / despatch completed	CC	16.09.2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	ER	16/09/2022

Application: 22/01140/LUEX **Town / Parish:** Lawford Parish Council

Applicant: V Long

Address: The Greenhouse Land rear of 58 Harwich Road Lawford

Development: Lawful Use Certificate for existing outbuilding as a separate independent dwelling unit.

1. Town / Parish Council

Miss Tighe Lawford Parish Council object to this application on the grounds
 Lawford Parish Council that it is a back land development and has a shared drive.
 17.08.2022

2. Consultation Responses

No comments received

3. Planning History

00/00136/FUL	Use of agricultural shed for storage of building materials and fabrication within the unit	Refused	21.06.2000
95/01335/FUL	Two storey extension to side and single storey extension to rear	Approved	13.12.1995
07/00729/FUL	Domestic two storey rear extension/annex.	Refused	28.06.2007
08/00905/FUL	Continued use of land as horse paddocks, the retention of a dressage / menage, the erection of a 3 - bay stable block with associated tack room and stores (following demolition of existing stable block), and the change of use of land from agricultural use to horse paddocks, as amended by drawing No. VL 1a received on 27th October 2008.	Approved	05.11.2008
20/00053/OUT	Outline application with all matters to be reserved for the proposed erection of one dwelling.	Approved	01.04.2020
20/00687/OUT	Outline application with all matters	Approved	14.09.2020

	to be reserved for the proposed erection of one dwelling.		
20/01794/DETAIL	Approval of reserved matters for outline application 20/00053/OUT for the proposed erection of one dwelling.	Approved	16.03.2021
21/00425/DETAIL	Reserved Matters following outline planning permission for the construction of a dwelling (20/00687/OUT).	Approved	
21/00858/FUL	Erection of 2no. dwellinghouses.	Approved	24.08.2021
21/01799/DISCON	Discharge of condition 5 (Landscape report) of application 21/00858/FUL.	Approved	04.11.2021
22/01140/LUEX	Lawful Use Certificate for existing outbuilding as a separate independent dwelling unit.	Current	

4. Relevant Policies / Government Guidance

The Planning and Compensation Act 1991; Section 171 (b)
The Town & Country Planning Act 1990; Section 191 (1) (a)

5. Officer Appraisal

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 completed
- 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
- 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:
 - a use
 - a building operation
 - 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

Submission:-

- Question 7 of the application form submitted on 19 Jul 2022 confirms that the application relates to an existing use.
- Question 10 of the application form submitted on 19 Jul 2022 confirms that the use begun in September 2016.
- Question 7 and 8 of the application form submitted on 19 Jul 2022 confirms that the use relates to C3.
- Section 3.0 of the Planning Statement submitted on 19 Jul 2022 the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- The application is accompanied by other relevant information.
- Un-numbered site plan, received 19 Jul 2022 identifies the land
- Question 5 of the application form submitted on 19 Jul 2022 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 4 years

Tendring District Council	Email	21 st November 2016
GS Plumbers	Letter	3 rd January 2017
Progas	Invoice	21 st December 2018
Progas	Invoice	4 th January 2019
Progas	Invoice	25 th January 2019
Progas	Invoice	8 th February 2019
Progas	Invoice	22 nd March 2019
Progas	Invoice	10 th May 2019
Progas	Invoice	29 th November 2019
Progas	Invoice	29 th April 2020
Caracconnect Ltd	Gas Safety Record	3 rd August 2020
Progas	Invoice	27 th November 2020
Progas	Invoice	18 th December 2020
Progas	Invoice	5 th March 2021
Progas	Invoice	31 st March 2021
Progas	Invoice	30 th April 2021
Progas	Invoice	27 th May 2021
Progas	Invoice	16 th September 2021
Progas	Invoice	7 th October 2021
Progas	Invoice	5 th November 2021

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.

This Certificate relates to The Greenhouse, Land rear of 58 Harwich Road, Lawford, CO11 2LP. The accompanying plans clearly indicate the extent of the land to which the certificate relates.

By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter(s) 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 use of an outbuilding as a separate independent dwelling unit being 'The Greenhouse' on Land rear of 58 Harwich Road, Lawford, CO11 2LP

Sufficient evidence has been submitted with the application which is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, The Greenhouse, Land rear of 58 Harwich Road, Lawford, CO11 2LP has been used as a dwelling house Class C3 for a period of at least 4 years and enforcement action can no longer be taken.

Representations

Lawford Parish Council object to this application on the grounds that it is a back land development and has a shared drive. In response to this; the application is for a Lawful Development Certificate - the determination of which is in regards to legislative provisions only. As such, whether or not the development accords with the relevant policies in the Development Plan is not a matter for consideration.

6. Recommendation

Lawful Use Certificate Granted

7. Reasons

Sufficient evidence has been submitted with the application which is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, The Greenhouse, Land rear of 58 Harwich Road, Lawford, CO11 2LP has been used as a dwelling house Class C3 for a period in excess of 4 years and enforcement action can no longer be taken.

8. Informatives

Are there any letters to be sent to applicant / agent with the decision?		NO
Are there any third parties to be informed of the decision?		NO