

DELEGATED REPORT

Report by Sam Summers	Date of report: 28/02/2025	Ref: 71390/LDCE
Registration: 10/12/2024	LDFC:	Expiry Date: 04/02/2025
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Certificate of existing lawful use to confirm the extent of lawful garden land associated with the dwelling known as Dearden Fold Farm Cottage

Location: Dearden Fold Cottage, Bury Old Road, Ainsworth, Radcliffe, Bolton, BL2 5PL

Description

An Application under Section 191 of the Town and Country Planning Act 1990 (as amended) for certificate of existing lawful use to confirm the extent of lawful garden land associated with the dwelling known as Dearden Fold Farm Cottage. The application has been made on the basis that the land has been used as residential land for a period of 10 years or more, thus rendering the use of the land immune from planning enforcement action in accordance with the time limits set under Section 171B(3) of The Town and Country Planning Act 1990.

Relevant Planning History

44200 - CERTIFICATE OF LAWFULNESS FOR EXISTING USE... - Withdrawn - Invalid
25/07/2005

Publicity

None

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Development Plan and Policies

Issues and Analysis

The application was originally submitted with the description 'Certificate of existing lawful use to confirm the extent of lawful garden land and residential curtilage at Dearden Fold Farm Cottage' however "Curtilage" is a physical concept derived from property conveyancing procedures and whether land falls within the curtilage of a dwelling is decided on the physical layout, the factual evidence and legal tests but it is not a "use" of land. Using land for garden purposes incidental to the enjoyment of a dwelling house is not determinative of that land being curtilage. The term "curtilage" or the "residential curtilage" of a property does not represent a use of land for planning purposes so a certificate cannot be issued for it. The applicant changed the description of the their application to 'Certificate of existing lawful use to confirm the extent of lawful garden land associated with the dwelling known as Dearden Fold Farm Cottage' and the council has proceeded to make a decision based on that description.

The onus is on the applicant to show by way of evidence that the land to which the application relates has been used as residential for 10 years or more making it immune from planning enforcement action, thus making the land use lawful. The legal test for evidence is on the "balance of probabilities" which in practice means that unless the authority has in its possession evidence that is clearly contrary to that submitted it must grant a certificate. Evidence submitted does not need to be corroborated by third parties.

The council has access to aerial views of the land from 2009 & 2016. Both of the aerial views show the land indicated to be regularly mown and kept tidy, with the 2009 aerial showing residential paraphernalia on the land. The applicant has provided multiple statement form nearby residents and a landscaping company. All of these statements agree that the land has been used for residential purposes for a period of at least ten years. The council does not have any evidence that would contradict the submitted statements. The statements are accompanied by photos taken in 2004, 2006 & 2014 showing the land was maintained and manicured as you would expect from residential land.

The applicant has also provided a supporting statement which provides more detail about the land. The statement explains that there is an uninterrupted relationship between the dwelling, driveway and grassed areas whilst there remains a boundary fence in place throughout the years providing separating the site from the wider farm and other dwellings. There are trees bordering the site which have been maintained as would be expected on a residential garden.

Given the details submitted and the fact that the authority does not have in its possession evidence that is clearly contrary to that submitted it must grant a certificate. This would therefore render the use of land as residential and immune from planning enforcement action in accordance with the time limits set under Section 171B(3) of The Town and Country Planning Act 1990.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The use described in First Schedule is deemed to be established and not liable to enforcement action under Section 172 of the Town & Country Planning Act 1990 (as amended) by reason of it existing on site on a continuing basis for ten years or more.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
SS	28/02/2025	DM -	03/03/25