

Delegated Decision Report

Application No:	25/1075	Statutory Period Expires:	6th February 2026
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Site:	<i>The Hollies, Isca Road, Caerleon, Newport NP18 1QG</i>		
Proposal:	<i>LAWFUL DEVELOPMENT CERTIFICATE FOR EXISTING USE OF AGRICULTURAL LAND AS RESIDENTIAL GARDEN</i>		
Applicant:	<i>M. Waite</i>		
Type:	Lawful Development Existing	Ward:	Caerleon
Decision:	REFUSED		

1. BACKGROUND

1.1 None.

2. SITE LOCATION AND CONTEXT

2.1 The application site comprises a two-storey terraced property in Caerleon, situated within the defined settlement boundary. The property lies within the Caerleon Conservation Area and is subject to an Article 4 Direction. It is also located within an Archaeologically Sensitive Area and falls within Flood Zone 3 (Rivers and Sea, defended) as identified by NRW's Flood Map for Planning. The dwelling benefits from a private rear amenity space. No off-street parking is provided, and vehicles are typically parked on Isca Road, which also forms part of a long-distance walking and cycling route.

3. DESCRIPTION OF DEVELOPMENT

3.1 This is an application under Section 191 of the Town and Country Planning Act 1990 (As amended) for a Certificate of Lawfulness to formally establish use of land to the rear of The Hollies, Isca Road, Caerleon, as a residential garden for more than 10 years prior to the date of application.

3.2 The land in question is within the urban boundary but is assumed to have remained in agricultural use for planning purposes. The land subject to this application is to the rear (SW) off an established garden area at the back of The Hollies which is a terraced house on Isca Road in Bulmore.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision	Decision Date
23/0660	LOFT CONVERSION WITH BONNET DORMERS	GC	17/12/2023
04/1627	DISCHARGE OF CONDITION 03 (ARCHAEOLOGICAL WATCHING BRIEF) OF PLANNING PERMISSION 03/0119 FOR THE ERECTION OF A SINGLE STOREY REAR EXTENSION	G	03/12/2004
04/0487	ERECTION OF SINGLE STOREY REAR EXTENSION INCLUDING BALCONY (AMENDMENT)	GC	21/05/2004

03/1689	PARTIAL DISCHARGE OF CONDITION 02 (FOUNDATION DESIGN) RELATING TO PLANNING PERMISSION 03/0119	A	23/01/2004
03/0119	ERECTION OF SINGLE STOREY REAR EXTENSIONS	GC	26/09/2003
02/0796	FELLING OF 3 LEYLANDII TREES AND TRIMMING OF 2M OF HORSE CHESTNUT TREE PROTECTED BY THE CAERLEON CONSERVATION AREA	NO	26/07/2002

5. PLANNING POLICY

5.1 Section 191 of the Town and Country Planning Act 1990 (As amended).

6. CONSULTATION RESPONSES

6.1 None.

7. PUBLIC REPRESENTATIONS

None.

8. ASSESSMENT

8.1.1 This is an application under Section 191 of the Town and Country Planning Act 1990 (As amended) for a Certificate of Lawfulness to formally establish use of land as a residential garden for more than 10 years prior to the date of application.

8.1.2 As this is an application for a Certificate of Lawfulness, the planning merits of the development is not in question. The consideration of the application is based on the evidence submitted to prove the claim for lawfulness, and, as such, there are no planning policies of relevance. Notwithstanding this, the application has been considered with regard to Welsh Office Circular 24/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements', in particular Annex 8 on Lawfulness and the Lawful Development Certificate (LDC).

8.1.3 In view of the basis on which the certificate of lawfulness is sought (10 years continuous use), the principal issue to consider in this certificate of lawfulness application is whether the evidence submitted with the application is sufficient to demonstrate that the piece of land has been continuously used as residential garden for a period in excess of ten years without deviation or a break in use prior to the submission of the application.

8.1.4 Paragraph 8.12 of Circular 24/97 notes that the onus of proof in a LDC application is with the applicant. It also notes that the LPA should always co-operate with an applicant seeking information they may hold. The relevant test of matters relating to applications for a Certificate of Lawful Use as detailed within the 1990 Act, is the '*balance of probability*'. Local Planning Authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

8.2 Evidence submitted by the applicant

8.2.1 Application form

The application form states that the land is currently classed as agricultural land but has been used as a garden since 01/12/1985.

8.2.2 Photos

The applicant has supplied two photos. One photo is an aerial view of the garden with from 2006 which shows a trampoline. The other is a photo of a piece of land with a garden sprinkler with no date attached.

8.2.3 Neighbour support

The neighbour at Chirtwell Cottage, 8 Bulmore Road provided an email to state that they had moved into the cottage in May 2016. Our house over-looks the garden of The Hollies, and for all of the time we have been at the house it has been used as a garden.

8.2.4 Plans

The applicant has provided plans detailing the land ownership, and which area of the land is stated to be residential garden.

8.3 Evidence from the council

Google mapping services were used to assess aerial imaging from the previous 10 years.

A site visit was conducted on 21st January 2026.

8.4 Consideration of evidence

8.4.1 Local Planning Authorities are advised if there is not sufficient evidence which undermines the applicant's version of events or the evidence provided is insufficiently precise, there is no good reason to refuse the application. However, in this instance, there is a certain degree of ambiguity with the evidence submitted by the applicant and this is assessed below.

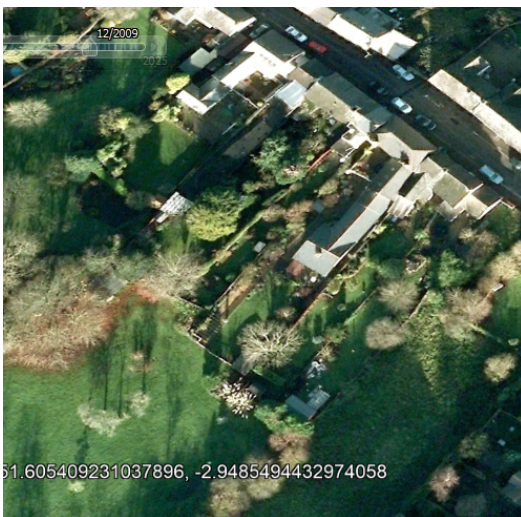
8.4.2 The applicant has submitted a 2006 aerial image showing a trampoline on the land. While the position of the trampoline could suggest that parts of the site were used in association with the enjoyment of the dwellinghouse at that time, the feature appears only on the 2006 imagery. On its own, this does not provide sufficient evidence that the whole of the land has been used continuously as residential garden. In addition, the single undated photograph provided by the applicant, showing a garden sprinkler, offers only limited support for the claim that the land has been used as residential garden for a period exceeding 10 years.

Photos submitted by applicant:



- 8.4.3 A review of aerial imagery from mapping services shows that, in 2010 a fence was present at the rear of the existing residential garden. This boundary feature likely marked the extent of land associated with the dwellinghouse at that time. Although the fence appears to have been removed around 2015, its removal alone does not demonstrate that the residential garden subsequently extended into the wider land. No substantive evidence has been provided to show that the land beyond the former fence line has been used as part of the residential garden.

2009 Aerial Image:



- 8.4.5 During the site visit, the land in question was observed to be mown and contained a few domestic items, including tables and chairs, a swing, and a couple of sheds positioned around the perimeter. However, from the plans provided, these sheds are already within the land classed as residential curtilage. While these features could suggest that the land has been used for residential rather than agricultural purposes, the application does not provide sufficient, robust evidence to demonstrate a continuous residential use of the land for a period of 10 years.



- 8.4.6 It is considered a neighbouring property has provided a statement via email to suggest that since moving into the property, The Hollies, have used the site as residential curtilage since at least May 2016. It is considered that evidence needs to be supplied to demonstrate that the use would be over 10 years since the date of the application, and thus, May 2016 would fall short by a number of months. Notwithstanding, whilst the statement is noted, the email can be given little weight as this is not a legal document in the form of a statutory declaration.
- 8.4.7 Overall, when applying for a lawful development certificate, the applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability. The burden of proof is on the applicant, and the local planning authority must be supplied with sufficient information to satisfy that the use is lawful. The Council's solicitor was consulted on the application and states without statutory declarations supported by photographs showing the use over the last 10 years with domestic paraphernalia etc., there is insufficient evidence submitted in line with the application to prove its continued use.
- 8.4.8 In view of the above, on the balance of probability it is considered that the applicant has failed to demonstrate that the ~~whole~~ area outlined on the site plan has been used as a residential garden for the requisite period of 10 years prior to the submission of the application and the Council has not received sufficient information and records to support the claim. The use is not lawful and a Certificate of Lawfulness under section 191 of The Town and Country Planning Act 1990 (as amended) is thereby not issued.

9. OTHER CONSIDERATIONS

9.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 *Equality Act 2010*

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

9.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

9.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

9.5 *Planning (Wales) Act 2015 (Welsh language)*

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

9.6 *Newport's Well-Being Plan 2018-23*

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

10. CONCLUSION

10.1 From the information presented by the applicant, insufficient evidence has been provided to prove the site has been used as residential garden for the requisite period of 10 years. Whilst some evidence of a trampoline was present in 2006, this does not provide sufficient evidence to justify a residential use. Moreover, whilst a neighbour has provided a statement to suggest the land has been used as residential garden since May 2016, this

falls short of the 10-year period. The site visit did demonstrate some domestic paraphernalia, however, given the shortfall of precise evidence submitted with the application, on the balance of probability, there is insufficient evidence to demonstrate that the area outlined as residential garden has been continuously occupied as a residential garden for a period of 10 years. Evidence submitted has not been concise enough to disprove this otherwise.

11. DECISION

REFUSED

01 Insufficient evidence has been submitted to prove on the balance of probabilities that the site has all been used continuously as domestic curtilage for a period of 10 years continuously prior to the date of the application. The Certificate of Lawfulness under section 191 of The Town and Country Planning Act 1990 (as amended) is not issued.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Site Location Plan and Area of Land to Change Use Classification; Neighbouring property supporting use; Site Photograph x2; Covering Letter

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). No Policies were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.