

Memorandum

To: Head of Planning and Transportation
cc: Robert Davis
From: Head of Legal, Estates and Member Services

Date: 30/08/2013
Ext: 3705
Ref: 13/00416/LDC

Town and Country Planning Act 1990 – s191 Application for a Certificate of Lawfulness for Existing Development at 17 Hillside Road, Hockley, Essex

With reference to the above application I have now determined the matter and enclose a copy of the decision letter and certificate of lawfulness.

This was sent to the applicant by first class post on 30th August 2013.

If you have any further questions, please do not hesitate to contact Chris Todman (Ext 3705).



Monitoring Officer



Head of Legal, Estates and Member Services

Mr Brett Turner
17 Hillside Road
Hockley
Essex
SS5 4RT

Ask for: Chris Todman
Ext: 3705
Direct Dial: 01702 546366
Email: chris.todman@rochford.gov.uk
Our Ref: 13/00416/LDC

Date: 30th August 2013

Dear Sirs

Town and Country Planning Act 1990 – s191 Application for a Certificate of Lawfulness for Existing Development at 17 Hillside Road, Hockley, Essex

1. I refer to your application for Certificate of Lawfulness for the above site dated 3 July 2013 (the 'Application Date').
2. The application site lies between Hillside Road and Crown Road, Hockley, Essex. The Green Belt boundary runs along the centre of the site and effectively splits the site into parts. The northern part of the site is allocated as a residential area on the area Local Plan and contains a single dwellinghouse. The south of the site, to which this application particularly relates, is an area of land lying within the Metropolitan Green Belt.
3. This application is made under Section 191 of the Town and Country Planning Act 1990 (the 'Act') which provides that if on application under that section the Local Planning Authority is provided with information satisfying it of the lawfulness at the time of the application of the operations or use described in the application, it shall issue a certificate to that effect and in any other case it shall refuse the application.
4. Section 191(2) of the Act further provides that uses and operations are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of the requirements of any enforcement notice then in force.
5. The basis of this application is that the area to the rear of the dwelling has been used for purpose of a residential garden since 1965. Residential use is considered unsuitable for land that lies on the Green Belt and shall not be permitted without planning permission. Therefore, this application will be an assessment as to whether or not this development can no longer be subject to any enforcement action due to the expiration of the relevant time limit.



6. For this application there is only one relevant time-limit. For the change from a Green Belt use class to Residential, under s171(3) of the 1990 Act, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In considering the relevant time-limit, I have assessed whether or not the purported 'garden' should be included as falling within the curtilage of the dwellinghouse. Under s55(2)(d) of the 1990 Act, land within the curtilage of a dwellinghouse which serves a purpose incidental to the enjoyment of the dwellinghouse shall not be considered to be a development, and as such will not require an enforcement time limit (i.e. the ten year rule). However, from examining the Local Plan, as well as the Council's ordinance survey plans, the north and south of the side of the site appear to be separated by a clear map line. Although it is unclear as to whether this land once served several properties, or it was perhaps a distinct piece of land entirely, the Council Planning Officer from an earlier enforcement case (13/00078/COU_C) picked up on this and deemed it necessary to assess this area separately from the main dwelling. I would agree with this assertion, and due to the reasons above, as well as the sizable nature of the back plot and the lack of any evidence to suggest otherwise, for the purposes of this determination, the southern area of the site has been considered as not within the curtilage of the dwellinghouse. As such the ten year rule under s171B(3) shall apply. Therefore, this determination will be an assessment of whether, on the balance of probabilities, the southern area of the site has been used as residential garden for a period of more than ten years from the Application Date, namely from 3 July 2003 to 3 July 2013.
7. In determining this application I have had consideration of the following documents:
- a. your application form.
 - b. the statutory declaration of Mr Steve Clover dated 5 July 2013.
 - c. the Land Registry Official copy of the title plan dated 2 October 2009.
 - d. the letter from Mr Richard Henshaw dated 27 June 2013.
 - e. the letter from Mrs S Booth dated 1 July 2013.
 - f. the letter from B J Petts dated 23 June 2013.
 - g. the letter from Mr Paul Newman dated 10 August 2013.

I have also had sight of the appropriate historical planning files and other relevant information available to the Council in reference to this site. The onus of proof in an application for a lawful development certificate is on the applicant.

8. The statutory declaration of Steve Clover dated 5 July 2013 provides evidence that the application site has been used as residential dwellinghouse and garden from at least 1975. In his declaration Mr Clover asserts that the land to the rear of the dwelling at number 17 Hillside Road has been used as a residential garden from earlier than 22 July 1975 when he, and his family, moved into 9 Hillside Road. Mr Clover explains that he knows this to be true because he was employed by the pre-1975 owners of 17 Hillside Road as a gardener for their property. Mr Clover goes on to state that he has lived at Hillside Road for 38 years and that during this time he has frequently walked past the rear of number 17 whilst walking his dog or playing with his

children. Mr Clover declares that at all times during this 38 year period the land to the rear of the number 17 Hillside Road has been a residential garden. This evidence has been given greater evidential weight due to its formal nature and the fact that it has been witnessed by a practicing Solicitor.

9. The Land Registry Official copy of the site title dated 2 October 2009, whilst not providing evidence of the use during the relevant period, gives a good overview of the layout of the site, which in turn, assists my understanding for the purpose of this determination.
10. The letter from Richard Henshaw, dated 27 June 2013, corroborates with Mr Clover's statutory declaration. This letter appears to be a reaction to a conversation with Mr Turner as it is addressed to 'Brett', which is assumed to be the applicant. In his letter Mr Henshaw relays that the land behind the applicant's house has been kept as a garden 'for as long as I can remember'. Although no exact dates are given, Mr Henshaw states that he has lived at number 11 Hillside Road since 1960 and so it seems highly probable that he will have a good knowledge of the surrounding area.
11. The letter from Mrs S Booth, dated 1 July 2013, once again supports the application. Mrs Booth states that during her 18 year residence at 10 Hillside Road, the rear of 17 Hillside Road has always been used as a garden. This is said to include the 3½ year period the current applicants have lived at the application site.
12. The letter dated 23 June 2013 is perhaps the most important piece of supporting evidence submitted with this application due to its author, B J Petts, living at 19 Hillside Road. This property directly backs onto the area of land in question and so they are ideally placed to give a true indication of the land's use over the past 10 years. B J Petts states that they have lived at number 19 for 35 years, during which time the land has always been used as a garden. B J Petts recounts that the previous owner, Mr J China, regularly cut the grass situated behind number 17 and 19 on his sit-on lawnmower. B J Petts states that due to extensive building works carried out by the applicant at present the land it may temporarily not appear to look like a residential garden, however, they state that it will clearly revert back to this use after the works are completed.
13. One piece of starkly contrasting evidence has been submitted. In his letter, dated 10 August 2013, Paul Newman states that since the summer of 2005 the back plot of land, behind the dwelling at 17 Hillside Road, has never been used as a residential garden. Mr Newman also relates that before the current owner moved in, the land was fenced off from the rest of the property and it was not until the applicant began renovation works that this fence was removed. Mr Newman also alleges that this back plot, prior to 2009, was used as a natural meadow and that other than the occasional cut of the 'wild grass', the land lacked the characteristics of a residential garden. Due to the close proximity of Mr Newman's residence, Badgers End, Crown Road, this evidence has been given substantial weight in determining this application.
14. I have the privilege of being able to access the Council's historical files on this site. The most applicable dealings concern the two applications for an extension to main dwelling (10/00055/FUL and 10/00397/FUL) and the recent planning enforcement matter (13/00078/COU_C). Although 10/00055/FUL and 10/00397/FUL primarily relate to the dwelling, there are references to the southern part of the site. In the Officers Report for 10/00055/FUL

the Council Officer states, 'the dwelling is sited on a 0.15ha plot, the rear part of which lies within the Metropolitan Green Belt'. Although being far from conclusive, this statement suggests that the whole plot was considered as being included as being part of the dwelling and not a separate piece of land.

15. The planning enforcement matter (13/00078/COU_C) which directly relates to this LDC application provides far clearer evidence. During discussions with Council Planning Officers, the current owner, Brett Turner, states that the previous owners of the land used the plot as a residential garden as well as operating their map-reading business from the garden workshop. It is unclear as to when this business/mixed use ceased, however, it seems that it was outside of the relevant period. Mr Turner relates that even during the previous owner's later years their son still visited in order to cut the grass and to keep the garden in order. As no formal statement has been submitted by the applicant this is useful evidence in understanding the land's previous use.

Determination

16. Despite the statements of Mr Newman, I believe that enough supporting evidence (including substantial neighbour corroboration) has been submitted to support the applicant's assertions. Therefore I determine that, on the balance of probabilities, the area to the rear of the dwelling has been used as a residential garden, continuously, between 3 July 2003 and 3 July 2013.
17. In line with s191(2) of the Act, the application for a lawful development certificate for the use of the 17 Hillside Road, Hockey, Essex can now be issued. I therefore approve this application, and attach a copy of the certificate to this letter.

Yours sincerely



Monitoring Officer
Head of Legal, Estates and Member Services





13/00416/LDC

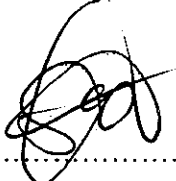
TOWN AND COUNTRY PLANNING ACT 1990: SECTIONS 191 and 192
(As amended by Section 10 of the Planning and Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order 1995: Article 24

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Rochford District Council hereby certify that on 3 July 2013 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons(s):-

- a) The time for enforcement action under the Act against a breach of planning control as set out by s.171B(3) of the Act has expired; as the breach has occurred for more than ten years from the date of application.

Signed.....

Head of Legal, Estates and Member Services
On behalf of Rochford District Council

Dated.....30 August 2013.....

First Schedule

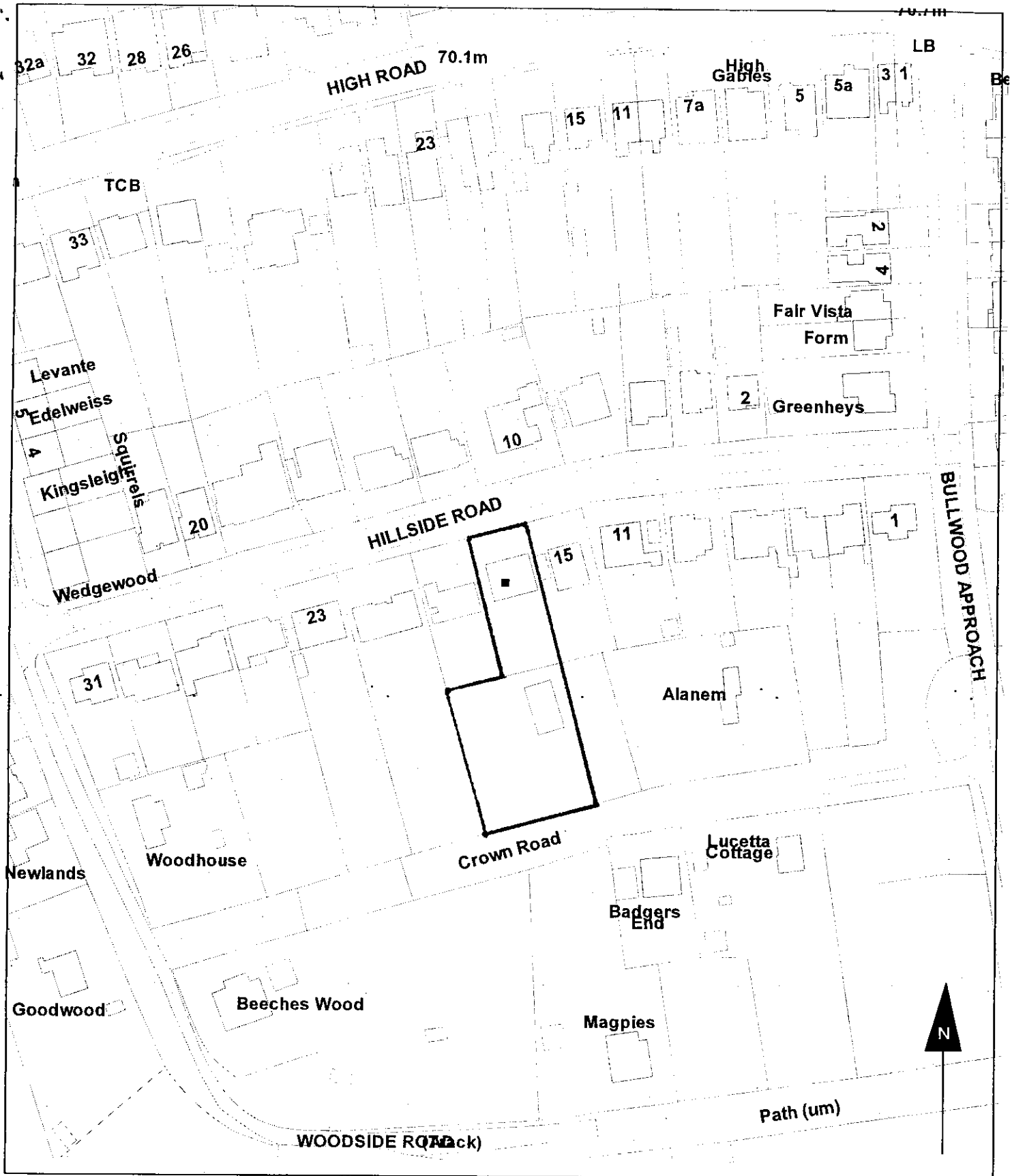
The use of the land, shown edged red on the plan attached to the Certificate, as a residential garden to the dwelling known as 17 Hillside Road, Hockley, Essex.

Second Schedule

Land to the rear of 17 Hillside Road, Hockley, Essex, shown edged red on the plan attached to this Certificate.

Notes

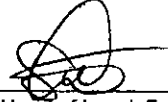
1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operation specified in the First Schedule taking place on the land described in the Second Schedule is lawful and therefore will not be liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.



Scale 1:1250

This is the plan attached to the Determination of Application
 reference 13/00416/LDC dated 30/08/2013

and referred to in the certificate of lawful use


 (For Head of Legal, Estates and Member Services)

Authority	Rochford District Council
Department	Legal Services
Date	30/08/2013



Memorandum

Legal Services Department

23 NOV 2013

To: Legal Services
From: Shaun Scrutton (Head of Planning and Transportation)
Dealt with by: Robert Davis
Ext: 3415
Date: 23rd August 2013
Ref: 13/00416/LDC

Legal Services Department

23 AUG 2013

Re: Application For A Certificate Of Lawfulness For Existing Development

Site: 17 Hillside Road, Hockley, Essex, SS5 4RT

This application refers to the use of land within the Metropolitan Green Belt to the rear of the dwelling. The land under the ownership of the applicant lies between Hillside Road, which is in a residential area, and Crown Road, which is within the Green Belt. The Green Belt boundary is approximately half way between the two roads and follows the rear boundary line of the neighbouring dwellings.

The applicant seeks a Certificate of Lawfulness for an existing use namely the use of the and within the Green Belt as residential garden.

Section 171B(3) of the Town and Country Planning Act 1990 specifies that where there has been a breach of planning control, no enforcement action may be taken after the end of a period of ten years beginning the date of the breach.

Relevant Planning History

10/00055/FUL Two Storey Pitched Roofed Front and Rear Extensions Incorporating Canopy to Front. Refused.

10/00397/FUL Two Storey Rear Extension and First Floor Front Extension. Approved.

Consultation

ECC Highways – De minimis.

Neighbour (Badgers End) – Land has not been used as residential garden since 2006.

Consideration

The extent of the site to which this application relates is shown edged in red on the plan date stamped 5th July 2013.

A Statutory Declaration has been provided by Steve Clover of Penrith, 9 Hillside Road stating that the land has been used as garden since 1975. Letters have also been provided from the following:

- Mrs. S.Booth, resident for 18years at 10 Hillside Road.



INVESTORS IN PEOPLE

- Richard Hanshaw, resident since 1960 at 11 Hillside Road.
- B.J.Petts, resident for 35 years at 19 Hillside Road

All the above have confirmed the use of land as residential garden for a period of at least ten years.

A letter has also been received from Paul Newman, resident since June 2006 at Badgers End on Crown Road to the rear of the site stating that the land was never used as a garden and occasionally the wild grass was cut.

On the balance of probabilities it is considered that the land has been used as a residential garden for a period of at least 10 years.

The LPA are not able to provide any evidence to counteract the claims made by the applicant.

Conclusion

It is considered that the applicant has provided sufficient evidence to determine this application and that the use of the land has existed for a period of ten years or more.

The target date for the determination of this application is the 30th August 2013.