

PLANNING STATEMENT

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE REGARDING THE EXISTING USE OF LAND FOR GARDEN PURPOSES

AT

**TAITS FARM COTTAGE
TARTS HILL
HANMER
WHITCHURCH
SY13 3DR**

FOR

Mr. K.A. Mines



PLANNING STATEMENT

1. INTRODUCTION

- 1.1 Instructions have been received from our client, Mr K A Mines, to submit an application seeking to regularise the planning status of land adjoining his home at Tait's Farm Cottage, Hanmer, nr Whitchurch.
- 1.2 The application is made on the basis that the land concerned has, for a period of more than the last 10 years been used continuously for garden purposes in association with the use of Tait's Farm Cottage, and for no other purpose.
- 1.3 The application is supported by signed Statutory Declarations.
- 1.4 Pursuant to Section 191 of the Town and Country Planning Act 1990, the Local Planning Authority is requested to issue a Certificate which recognises the lawful use of the application site for garden purposes without any further restriction.

2. THE LEGAL BACKGROUND

- 2.1 Section 191 (b) of the Town and Country Planning Act 1990 (at sub-section 1) (as amended by Section 10 of the Planning and Compensation Act 1991) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful or whether any operations which have been carried out in, on or under land are lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use in question.
- 2.2 For the purposes of the Town and Country Planning Act 1990, Section 191(2) makes it clear that uses and operations are lawful at any time if :

“(a) no enforcement action may then 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

(b) It does not constitute a contravention of any of the requirements of any enforcement notice then in force.”

- 2.3 Section 171B of the Town and Country Planning Act 1990 states that :

“(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of, building, engineering, mining or other operations in, on, over, or under land, no enforcement action may be taken after the end of four years beginning with the date when the operations were substantially completed.”

“(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.”

“(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.”

It is clear from subsection (3) above that the relevant period after which no enforcement action may be taken in regard to a breach of planning control consisting of a material change of use of land is generally ten years from the date of the breach taking place.

- 2.4 Section 191 (4) provides that if, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- 2.5 It is accepted that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is also entitled to canvass evidence if it so wishes before determining an application. If it obtains such evidence, then this should be shared with the applicant who then has the opportunity to comment on it and possibly to produce counter-evidence.
- 2.6 In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the

application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

2.7 In dealing with applications for certificates of lawful use the planning merits of the case are not relevant to the consideration of the application, which must be determined upon the facts of the case and relevant planning law only.

2.8 In terms of the provision of evidence, in the case of *FW Gabbittas v SSE and Newham LBC* [1985] (JPL 630) the Court held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's evidence unreliable then this alone is sufficiently precise and unambiguous to justify the grant of a certificate "*on the balance of probability*"

3. THE SITE

3.1 The area of land for which a certificate of lawful use is sought is edged red on the 1:1250 scale location plan submitted with this application. It will be noted that the land concerned includes an ornamental pond. The site edged red is owned by the applicant, Mr Kenneth Andrew Mines, as is the adjoining garden land and Tait's Farm Cottage itself (a converted barn) which is edged in blue. Mr Mines lives in the cottage.

4. SUMMARY OF THE MAIN FACTS

4.1 The applicant purchased the land which is the subject of this application from the Gredington Estate in September 2001, prior to which it had been part of an area of agricultural pasture land, with the pond being fenced off to cattle.

4.2 In October/November 2001 Mr Mines (the applicant) erected a stock-proof fence along the easterly and southerly boundaries of the land he had purchased from the Estate (in accordance with the conditions of sale).

4.3 During the same time period Mr Mines dredged out the pond, removed some unwanted trees and vegetation and generally tidied up the site. At this time, he also removed a fence which was in a poor condition and which had up to this point

divided the garden associated with Tait's Farm Cottage from the land he had just acquired from the Gredington Estate.

4.4 During the months of November 2001 to March 2002 the applicant seeded the bare areas of grass within the land he had acquired and had regraded, and he planted up the banks of the pond, mostly on the eastern side, with ornamental shrubs and small trees in order to create a garden ambience with colour and interest – the site then assumed a very different appearance and character from its previous use as open pasture land.

4.5 By the 21st December 2001, the land had been fenced off, the pond dredged, the banks regraded as required, some ornamental planting had been carried out, and grass seeding had taken place so that the site was suitable and safe for use as garden land in association with the use of Tait's Farm Cottage. It is from that date that the garden use commenced. From then until the present day the garden associated with Tait's Farm Cottage and the land which is the subject of this application have never been physically divided one from the other and the land identified by red edging on the plan attached to this application has been used continuously for garden purposes in association with the use of Tait's Farm Cottage.

5. MAIN ISSUE TO BE CONSIDERED

5.1 It is considered that based upon the facts of the case the main issue that needs to be assessed is whether or not the submitted evidence, including the content of this statement, demonstrates that on the balance of probabilities the application site edged red has been used for garden purposes in connection with the use of Tait's Farm Cottage for a continuous period of at least ten years preceding the submission of this application.

6. CASE FOR GRANTING THE CERTIFICATE

6.1 The application is supported by four Statutory Declarations which all substantiate the claim that the area of land which is the subject of this application has been used as garden land for more than 10 years continuously before the date of this application.

- 6.2 It is appreciated that parts of the evidence supplied in the Statutory Declarations relate to time periods pre-dating the ten-year period immediately prior to the submission of this application, but it is anticipated that in contextual terms the information supplied will be of assistance to Officers in explaining how and when the creation of the garden and its usage came about.
- 6.3 The first sworn Statutory Declaration referred to is that of the applicant himself, Mr Kenneth Anthony Mines. In this statement he confirms that he is the owner of Taits Farm Cottage and that he purchased the site which is the subject of this application in September 2001. A condition of the sale of the land to him was that he erect a stock proof fence to prevent cattle from escaping onto the site from the adjoining agricultural pasture land that was retained in the ownership of the Gredington Estate. The position of this fence is shown on the plan attached to the applicant's Statutory Declaration. The statement explains the various steps that Mr Mines took after he completed the purchase of the land in September 2001 to convert the land and pond into a condition suitable for the purposes of garden use and to remove the remnants of a fence that at that time separated the land concerned from the garden of Taits Farm Cottage. Mr Mines commenced the use of the land for garden purposes on December 21st 2001, since which time he has continued to keep the grass throughout the parcel of land he acquired close-mown and suitable for sitting on or walking around for relaxation purposes. Mr Mines has an interest in and qualification in horticulture and has also continued to landscape the garden with ornamental plants and shrubs and kept it very well maintained and weeded as required throughout the period since his purchase and tidying up of the land in 2001 up to the present day. Mr Mines has used the land for walking around or sitting in for personal relaxation frequently and regularly throughout the period since December 2001 up to date and, as has been stated, he has continued to tend the garden plants he has planted continuously throughout that time period, he has also been visited by his grandchildren who have not infrequently played and camped on the land and they have also gone out onto the pond in the boat which Mr Mines keeps on the water to this day. Other than bird feeders, Mr Mines has not erected any structures on the land. At no time since December 21st 2001 to the present date has the land been used for agriculture or any other purpose than garden use in association with the use of Taits Farm Cottage.

- 6.4 Whilst the Courts have held that the applicant's own evidence does not need to be corroborated by independent evidence to be accepted, three other Statutory Declarations have been obtained which support the applicant's evidence concerning the use of the land concerned continuously since December 2001 for garden purposes.
- 6.5 The second Statutory Declaration is by Robert Rounding who was a tenant farmer of the land surrounding Tait's Farm Cottage. Mr Rounding confirms in his Statement the facts surrounding the timing of the creation of the garden and also states that throughout the period of his tenancy, (which was in being when Mr Mines purchased the land and ended with Mr Rounding's retirement in 2018) the land concerned was never in agricultural use. Mr Rounding also confirms that up until his retirement he often went past the application site when he was carrying out his farming duties, and observed Mr Mines gardening the land, mowing the grass, sweeping up leaves or sitting in it and observed that the garden was always kept in a very good "manicured" condition with the grass kept short. Since his retirement Mr Rounding has passed the land on a number of occasions and has never observed it being used for any other purpose than garden land.
- 6.6 The third Statutory Declaration is supplied by John Catmur who worked with Mr Mines in the building trade from 1991 until Mr Mines' retirement. Mr Catmur confirms the steps taken by Mr Mines to convert and use the land concerned as garden land; indeed, Mr Catmur helped Mr Mines to erect the stock proof fence around the site to keep cattle out of it, and he assisted in clearing the land of unwanted trees and burning brushwood. He also observed Mr Mines dredging the pond and clearing its banks up. Mr Catmur confirms the further steps Mr Mines took to landscape the site and use it as garden land and also observes that Mr Mines has always tended the garden and mowed the grass regularly to keep it short and has kept the garden in an admirable condition. He states in his Statutory Declaration that the land concerned has never, since he (Mr Mines) purchased it in 2001 been used for any other purpose than that of a garden in connection with the occupation of Tait's Farm Cottage, and that this use has been continuous and unbroken to the present day. He points out that the stock -proof fence that he helped Mr Mines to erect along the boundary of the site with the Gredington Estate retained land is still there to this day.

- 6.7 The final Statutory Declaration is from Janet Leese which states that she has worked for Mr Mines in the capacity of a part-time house-keeper ever since 2008. Ms Leese describes the well-tended condition of the land and its use for garden purposes when she commenced working at Taits Farm Cottage in 2008 and confirms that Mr Mines still gardens the land concerned and maintains it in the best condition he can and that he has done so “consistently and without interruption” throughout the period she has worked for him to date. She describes the various garden purposes for which Mr Mines has used the land including weeding, planting ornamental trees, flowers and shrubs, keeping the grass short-mown, sitting out in the garden and frequently when the weather permitted having his meals outside within the land area concerned. He also frequently entertained his grandchildren, playing games and having picnics with them and exercising the family dogs on the land in question. Ms Leese confirms that “In the time since 2008 to date to my certain knowledge the land has never been used for anything other than Mr Mines’ own private garden”
- 6.8 The author of this report, Geoff Allen, has had occasion to visit Mr Mines at his property on a number of occasions since February 2019 to provide him with professional advice. Mr Allen is bound by the code of practice of the Royal Town Planning Institute, of which he has been a Chartered Member for in excess of forty years. He confirms that on each on each occasion he visited Mr Mines (3 visits) he has been able to see that the land concerned in this application has always been very well kept and tended with an unequivocal appearance as a private garden. Mr Allen has found no reason to question or doubt Mr Mines’ evidence that the area of land for which a Certificate of Lawful Use is now sought has been used as private garden for in excess of 10 years continuously preceding the submission of this application.
- 6.9 Mr Allen took photographs of the site on the occasion of his last visit on 30th July 2020, four of which are reproduced on the following pages of this Statement. Whilst it is accepted that these photographs represent a snapshot in time only, nevertheless they do provide some corroboration of the matured landscape appearance of the site and show the original stock proof fence erected by Mr Mines in 2001 still in situ. The land was not separated in any way from the land edged blue on the application now submitted, this land also being owned by Mr Mines and used as private garden. It is difficult to escape the conclusion, from all the evidence submitted, that the land edged red and that edged blue on the application plan has

been used as one garden unit and for no other purpose(s) continuously since the end of 2001.



Photograph 1. View of the eastern edge of the application site showing Taits Farm Cottage in the background, part of the stock-proof fence particularly referred to in the Statutory Declarations of Mr Mines and Mr Catmur on the eastern (right hand side of the picture) and some of the ornamental planting carried out by Mr Mines on the regraded bank of the pond in the centre of the photograph.



Photograph 2. View across the landscaped pond north-eastwards with further pond-edge ornamental landscaping shown in the centre of the photograph.



Photograph 3. View showing the pond with water lilies and the boat used for clearing weed from the water surface and for recreation still in situ. The stock-proof fence erected by Mr Mines and Mr Catmur can be seen in the background of the photograph.



Photograph 4. View along the westerly boundary of the application site towards Tait's Farm Cottage with the public highway just out of shot on the left of the photograph.

7. CONCLUSION

- 7.1 The four Statutory Declarations submitted with this application are consistent with each other and it is considered that cumulatively they provide robust and convincing evidence that the land concerned has been used continuously for the purposes of a garden in association with Tait's Farm Cottage for a period well in excess of ten years prior to the submission of this application.
- 7.2 Whilst the burden of proof falls upon the applicant, this is not required to meet the standard of proof required in criminal cases i.e. *beyond a reasonable doubt*, but rather is simply to establish the veracity of the applicant's case *on the balance of probabilities*.
- 7.3 Unless the local planning authority has evidence of its own, or from any others, to contradict or otherwise make the applicant's claim less than probable then, given the unambiguous evidence provided by the four sworn Statutory Declarations in this case, the grant of a positive Certificate of Lawful Existing Use would be entirely justified and appropriate. Indeed, Section 191 (4) of the Town and Country Planning Act 1990 provides that in the circumstances where the planning authority is supplied with information satisfying them of the lawfulness at the time of the application of the use described by the applicant then they should grant a certificate to that effect.
- 7.4 The applicant therefore looks forward to the grant of a positive certificate of lawful existing use which will confirm his unfettered right to continue the use of the land in question as a private garden associated with the use of Tait's Farm Cottage.
- 7.5 Should the Planning Officer have any queries concerning the matter, the applicant's agents will be pleased to deal with them.

Geoff Allen

Geoff Allen Associates

October 19th 2020