CASE OFFICER'S REPORT

Application Reference:	PL/2023/08651
Application Type:	Lawful development: Existing use
Site Inspection:	
Consultation ends:	17 November 2023
Case officer:	Peter K-Gyabong

Site Address:	LAND AT LOWER FOSSE FARM, TURNERS LANE, CRUDWELL, SN16 9SW
Proposal:	Certificate of lawfulness sought for the use of land as residential and the siting of residential caravan in-situ for excess of 10 years
Recommendation:	Refuse

Existing use/development:

The subject of this certificate application is the caravan currently in use as a dwelling on land known as Land at Lower Fosse Farm, Turners Lane, Crudwell, Wiltshire SN16 9SW. The site currently comprises a rifle range (Corinium Riffle Range) which forms part of the land associated with Land at Lower Fosse Farm.

POLICIES/LEGISLATION

National Planning Policy Framework
Planning Practice Guidance - Lawful Development Certificates 17c
Town and Country Planning Act 1990 (Sections 191-193)

Legislation / Planning Practice Guidance

Section 191(1) outlines that "If any person wishes to ascertain whether—
(a)any existing use of buildings or other land is lawful;
(b)any operations which have been carried out in, on, over or under land are lawful; or
(c)any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."
Section 191(2) of the Act outlines that "For the purposes of this Act 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)they do not constitute a contravention of any of the requirements of any enforcement notice then in force."
In processing Lawful Development Certificate applications, the onus is firmly on the applicant to provide sufficiently precise and unambiguous detail or evidence to justify the grant of a Certificate.

The Local Planning Authority must be supplied with sufficient information to allow the application to be determined. The legislation is clear that without sufficient, precise and accurate information, Local Planning Authorities are justified in refusing a Certificate.
Planning practice guidance (paragraph 17 C) advises that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this application or appeal process.

Planning History

N/11/02071/S73A - Retention of Rifle Range, Shooting Shelter, Car Parking Area and Use of Land for Stationing of Portacabin (Retrospective Application). Allowed by appeal APP/Y3940/A/12/2187218 on 10th June 2013.
N/05/02664/AGN – Proposed agricultural building. Approved on 16th November 2005.

Assessment of the Proposal
The National Planning Practice Guidance outlines that an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. A timeline of key dates has been provided, this states that the applicant moved into the caravan that was on the land in March 2013 and has been in residential use to present day.
The principal source of evidence is a sworn statutory declaration by the applicant (Mr Paul Hill), exhibit consisting of a site plan to show the location of the caravan, and aerial photographs of the land showing the part of the land being used as a site for the caravan. of One regular visitor to the riffle range (Mr Paul Blackwell) has submitted sworn statutory declaration to confirm that the caravan has been in use for residential purposes on the land the applicant since March 2013.
It is noted on the aerial photographic evidence submitted with the application that the caravan was in situ, immediate adjacent to a portacabin in October 2017, April 2019, April 2021 and August 2023. However, the aerial photographic evidence submitted is not clear in terms of the position and presence of the caravan in April 2014, 2013, and 2012. Whilst the presence of caravan does not in itself provide evidence of residential use since such development/activity could equally be associated with continuation of use as part of ongoing riffle range.
It is clear from the above that the photographic evidence submitted is not sufficient to conclude that a continuous use has occurred for more than 10 years. The Council has contradictory evidence to the facts of the case as set out in the application and the statutory declarations. The Council has been provided with evidence from the Enforcement Team that they investigated a complaint (14/ 00998/ENF), closed on 24th June 2015, to a caravan sited on the land (a rifle range) which was being used for residential purposes on the site shown on the plans submitted with the application. They noted on their site the caravan, sited on the land appeared to be used in addition to a portacabin and large shed which was not considered to be reasonably necessary to the use of the land and the owner was required to remove it within the 28 days which they did and because of the removal no further action was required. The applicant has submitted no photographic evidence to cover 2015 and 2016. The Council's evidence corroborates the absence of photographic evidence of the presence of the caravan in 2015 and 2016, as the applicant was

asked to remove the caravan, which would bring into question the evidence provided in the declaration submitted by the applicant in support of this application for a certificate of lawful use.

SUMMARY AND CONCLUSION

A Lawful Development Certificate is sought for the change of use of land from agricultural use to form an extension to the existing residential garden of the property known as Land at Lower Fosse Farm on the basis that the use has occurred since March 2013, for a period exceeding 10 years.

On the basis of the available evidence and relevant planning law, it is considered that the continued use of land and the caravan for residential purposes for more than 10 years has not been satisfactorily demonstrated and as such the use as residential accommodation is not immune from enforcement action and would not be lawful without the submission and approval of an application for planning permission.

RECOMMENDATION

The application for a lawful development certificate should be refused.

Refusal Reason(s): (1)

1 On the balance of probabilities it can be concluded that the caravan and its use as residential accommodation over the Land at Lower Fosse Farm, as described within the application occurred less than 10 years ago and has not been continuous from 20/10/2013. As such the proposal is not in accordance with Section 171 B (3) of the Town and Country Planning Act 1990. The time limit for taking enforcement action had not expired.