CASE OFFICER'S REPORT

Application Reference:	PL/2023/08669
Application Type:	Lawful development: Existing use
Site Inspection:	
Consultation ends:	17 November 2023
Case officer:	Samantha Stockley

Site Address:	The Meadows, Brinkworth Road, Royal Wootton Bassett, Swindon, SN4 8DT
Proposal:	Certificate of Lawfulness application to confirm the subdivision of the dwelling historically known as The Meadow in 2012 to create 2No separate and lawful new dwellings; Top Meadow and The Meadows.
Recommendation:	Refuse

SITE DESCRIPTION

The application site is located on Brinkworth Road amongst a small row of houses in the open countryside close to Royal Wootton Bassett. It is part of a stretch of road that was apparently severed by the creation of the M4 motorway. The site currently contains a 1.5-storey, 20th-century dwelling of rectilinear form with dormer windows, which has been subject to alteration in its lifetime. To the west of the main dwelling is a storage building, which has previously been used to store building materials, although it is a garage outbuilding.

The site is not within a protected landscape or the setting of any heritage assets. There are no public rights of way crossing or abutting the site, and there are no other significant planning constraints relating to it.

The main building, which is the subject of this application, is subject to an existing application to Demolish an existing house and rebuild a new dwelling and detached garage, which has been approved with conditions under application PL/2022/08661.

SITE APPLICATION HISTORY

PL/2022/08661, Demolish existing house and rebuild new dwelling and detached garage, Approve with Conditions, 13/06/2023.

N/05/01098/ENF, Appeal Against Enforcement - The Change of Use of Land and Buildings from Use as a Single Dwellinghouse (Class 3 of the Town and Country Planning (Use Classes) Order 1987) to a Use for that Purpose and the Addition of a Separate Self-Contained Unit of Res, APPEAL DISMISSED, 29/11/2005

N/04/02580/S73A, ERECTION OF THREE DORMER WINDOWS AND SUB-DIVISION OF EXISTING DWELLING TO FORM TWO SELF CONTAINED DWELLINGS, Refused, 20/10/2004

N/95/00019/FUL, EXTENSION TO SIDE AND REAR (RENEWAL OF N/89/2960/F) EXTENSION (RENEWAL), Approved, 20/03/1995.

N/92/02217/FUL, RETENTION OF USE OF REDUNDANT AGRICULTURAL BLDGS FOR STORAGEOF BUILDING MATERIALS/WASTE BUILDING MATERIALS/OUTSIDE STORAGE AND LANDSCAPING SCHEME USE TO STORE BLDG MATERIALS, Approved, 01/02/1993.

N/91/02676/ENF, APPEAL AGAINST ENFORCEMENT - USE AS A BUILDERS STORAGE AREA, Unknown,

N/89/02960/FUL, ALTERATIONS AND EXTENSIONS TO DWELLING, Approved, 26/01/1990,

APPLICATION DETAILS

The applicants seek a Lawful Development Certificate pursuant to Section 191 of the 1990 Act for the to confirm the subdivision of the dwelling historically known as The Meadow in 2012 to create 2No separate and lawful new dwellings; Top Meadow and The Meadows.

LEGAL ISSUES

Assessment:

Section 191, part 1, of the Town and Country Planning Act 1990 (as amended) reads as follows:

(1) 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 matters.

Section 191, part 2, of the Town and Country Planning Act 1990 (as amended) reads as follows:

(2) 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.

Section 171B of the Town and Country Planning Act 1990 (as amended) reads as follows:

(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 the period of four years beginning with the date on which 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 dwellinghouse, no enforcement action may be taken after the end of the period of four 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 ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

It is considered that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Section 191, part 4, of the Town and Country Planning Act 1990 (as amended) reads as follows:

(4) If, on an 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 that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Obtaining a CLE will have the effect of proving that the development is lawful, and protect the development from enforcement action.

The onus is on the applicant to prove the case by supplying sufficient clear and precise evidence to satisfy the Authority that a CLE - the test to be applied to that evidence is the 'balance of probability'.

The application is assessed purely on the evidence; the planning merits of the development are irrelevant.

CONSULTATION RESPONSES

Royal Wooton Bassett Town Council – have raised no objections to this application.

THE EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

Documents submitted with the application form include:

1. Submitted drawings including a Site Location Plan, Block Plan;
2. Sworn statement;
3. Detailed floor plans and accompanying utility invoices, tenancy agreements, bank statements and post office address communications;

4. Enforcement Notice 03/00408/ENF

EVIDENCE FROM THE PLANNING HISTORY

N/05/01098/ENF, Appeal Against Enforcement - The Change of Use of Land and Buildings from Use as a Single Dwellinghouse (Class 3 of the Town and Country Planning (Use Classes) Order 1987) to a Use for that Purpose and the Addition of a Separate Self-Contained Unit of Res, **APPEAL DISMISSED, 29/11/2005**

N/04/02580/S73A, ERECTION OF THREE DORMER WINDOWS AND SUB-DIVISION OF EXISTING DWELLING TO FORM TWO SELF CONTAINED DWELLINGS, **Refused, 20/10/2004**

Reason for refusal:
The proposal involves the creation of a separate dwelling unit outside the framework boundary and the physical limits of a settlement were new dwellings, under policy RH11 of the local plan, will not be permitted unless connected with the essential needs of forestry or agriculture. The establishment of an additional separate dwelling unit on the site is likely to lead, in due course, to additional development by way of extensions or redevelopment which the planning authority would find very difficult to resist but would erode the character of the countryside in this area.

CONTRARY EVIDENCE

The following contrary evidence was submitted

1. Sworn statement;
2. Detailed floor plans and accompanying utility invoices, tenancy agreements, bank statements and post office address communications;
3. Enforcement Notice 03/00408/ENF dated 28th February 2005

Further contrary evidence includes

• Application N/04/02580/S73A, refused 19 October 2004

• Appeal Decision APP/J3910/C/05/2001844& 2001845 dated 29th November 2005

RELEVANT TIME LIMIT

Taking into consideration the relevant time period for enforcement action in respect of breaches of planning control, Section 171 B of the 1990 Act specifies these time-limits as follows:

• For operational development - four years from the date on which the operations were "substantially completed". This applies to all breaches of planning control consisting in the carrying out without planning permission of all forms of "operational development", namely, the carrying out of building, engineering, mining or other operations in, on, over or under land;

• For breaches of planning control consisting in the change of use of any building (which, for the purposes of the 1990 Act, includes part of a building) to "use as a single dwellinghouse"

- four years from the date of the breach. This time-limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted;

• In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

CONSIDERATION OF EVIDENCE

Considering the conclusive evidence and in response to the submitted information within this certificate application, the time period in which this application for a certificate shall be considered is 4 years prior to the date the Certificate of Lawfulness application is submitted to the local planning authority. Therefore, in this case, the relevant time period over which the breach of planning control must be demonstrated is: **9th October 2019 to the 9th October 2023**

Site History/Contrary evidence

The application history has been reviewed in relation to this application as part of a consideration of contrary evidence. The application site has been subject to an application in 2004 under application number N/04/02580/S73A for the Erection of three former windows and subdivision of an existing dwelling to form two self contained dwellings, following enforcement action under ref 03/00408/ENF. The application was subsequently refused on the 20th October 2004.

Reason for Refusal: The proposal involves the creation of a separate dwelling unit outside the framework boundary and the physical limits of a settlement were new dwellings, under policy RH11 of the local plan, will not be permitted unless connected with essential needs of forestry or agriculture. The establishment of an additional separate dwelling unit on the site is likely to lead, in due, course, to additional development by way of extensions or redevelopment which the planning authority would find very difficult to resist but would erode the character of the countryside in this area.

Following on from this the enforcement action was reopened under ref 05/01098ENF which result in the issuing of an enforcement notice Ref 03/00408/ENF on the 28th of February 2005 to take effect on the 11th April 2005.

The applicants appealed the refusal of application N/04/02580/S73A and also appealed the enforcement notice 03/00408/ENF/05/01098ENF. The appeal (refence number APP/J3910/C/05/2001844& 2001845) was dismissed on the 29th November 2005.

The appeal reasons in brief concluded that the unauthorized work resulted in the created on a new dwelling in the countryside that could not be considered a family home, so while it would not impact school places the development goes against the national policy restrictions placed on development in the countryside that aid is delivering sustainable development.

The appeal also concluded that while the development could be considered to be not very great, it would be significant enough to result in possible subdivision of the home or set a president future applications for more dwellings within the site.

Submitted evidence/Contrary evidence

The applicants have stated that the properties within the site have been split into two independent dwellings since 2012. The application includes floor and elevation plans indicating that the dwelling referred to as Top Meadow is a first-floor flat with its own independent access to the building's front elevation next to the existing triple garage. The plans show the first-floor flat consists of a bathroom, two bedrooms, a kitchen, and a separate lounge.

In the Statutory Declaration, the applicant states that the former owners of the property known as The Meadows were Mr David Taylor and Mrs Stella Taylor (Applicant Parents), now deceased. In the declaration, it is set out that Mr David Taylor passed away in March 2022, and Mrs Stella Taylor, following her husband, passed away in July 2022. Following this, the declaration confirms that the former tenant, Mr Matthew Taylor, and Mrs Louisa Taylor (of no relation) moved out of the property on the 19th of December, 2022. The applicant further confirms that the main house and maisonette have been vacant since.

Supplementary evidence includes council tax bills for Top Meadow, which began in June 2012, and financial years 2015/2016 and 2022/2023 in the name of the tenant who moved into the property in 2012. Further supporting evidence includes the tenancy agreement for Top Meadow property signed in June 2012 and other banking and utility bills covering varying years started in 2012. Additional information should be in the form of council tax statements spanning several years since 2013 and a letter from Royal Mail indicating the change in address at the property. Further supplementary evidence includes council Tax statements in the name of Mrs Stella Taylor for 2012/2013 and 2018/2019; however, these did not include any address details. No other evidence has been submitted to show that Mr David Taylor and Mrs Stella Taylor were in residence in the property, known as The Meadows, from 2012 till their respective passings in 2022.

Given the evidence with in the site history demonstrating that the applicants were in full knowledge that the subdivision of the property would not be supported and had previously resulted in enforcement, statutory declaration, supplementary evidence and that the relevant time period over which the breach of planning control must be demonstrated is: 9th October 2019 to the 9th October 2023. It is clearly demonstrated that the use of the building as 2 separate dwelling houses was unauthorised and was not continuous and therefore on the balance of probabilities the Local planning Authority are minded to refuse the application.

CONCLUSION

The key issue in processing a Lawful Development Certificate is the balance of probability. The applicant has to provide evidence that is sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability. The onus is firmly on the applicant to supply

sufficient factual information that would allow for a positive determination and the legislation is clear that without sufficient, precise and accurate information the local planning authority are justified in refusing consent.

Therefore, for the reasoning as outlined within this report, the Local Planning Authority are satisfied that with the consideration of the contrary evidence, submitted evidence and based on the balance of probabilities, the subdivision of the dwelling of the residential property known as The meadows to form The Meadows and Top Meadows has not been continuously inhabited and used as such for a period of 4 or more years.