

DELEGATED FILE NOTE

CASE OFFICER: ...Harriet Sanders.....

APPLICATION REFERENCE	BRIEF DESCRIPTION OF DEVELOPMENT	APPLICATION SITE
26/01681/LDCE	Continued use of land as a domestic residential garden.	Rose View Cottage Gosmore Road Hitchin Hertfordshire SG4 9BG

Submitted Plan Nos

Location Plan

1.0 Policies

2.0 **Site History**

- ☐ 03/01926/1HH & 03/01927/1LB – Two and single storey rear extension. New roof to existing single-storey side extension – February 2004.
- ☐ 03/00351/HH & 03/00417/LB – part two-storey and part single-storey rear extension, new roof to existing single-storey side extension and first-floor side extension – refused August 2003.
- ☐ 00/01413/LB & 00/01414 – Rear Conservatory – Permitted November 2000.
- ☐ 96/00274/1LB – single-storey side extensions – Permitted April 1996
- ☐ 82/00841/1 – Erection of first floor and part two-storey rear extension – Permitted July 1982.
- ☐ 79/02019/1 – Erection of a single-storey rear extension. Permitted – December 1979.
- ☐ 78/00558/1 – Erection of two-storey rear extension and detached double garage and conversion of two cottages into one dwelling – Permitted June 1978.

3.0 **Representations**

3.1 N/A.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 Rose View cottage is a detached dwelling located on the west site of Gosmore Road/Hitchin Road. Rose View Cottage is Grade II Listed and located within the Green belt.

4.2 **Proposal**

4.2.1 The application seeks to establish that no enforcement action can be taken in relation to the land outlined in red on the submitted Location Plan and that it has been used continuously as domestic residential garden associated with Rose View Cottage for a period exceeding over 10 years, with reference to Section 171B(3) of the Town and Country Planning Act 1990.

4.3 **Key Considerations**

4.3.1 Section 171B(3) of the Town and Country Planning Act (TCPA) 1990 (amended) states that:

“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.”

4.3.2 The burden of proof to demonstrate the lawfulness of the use is on the applicant. The Courts have held that the relevant test of the evidence on such matters is “the balance of probability”.

4.3.3 The applicant has submitted the following evidence in support of the claim that the land in question has been used as part of a domestic planning unit by Mr & Mrs Barnett continuously since 1998, when they started occupying the property:

- Signed Statutory Declaration by Mr Clive Barnett (including Images of the land being used by the family. And Sales particulars).
- Signed Statutory Declaration by Mrs Sue Barnett (including Images of the land being used by the family. And Sales particulars).
- Signed Statutory Declaration by Karen McConnell.
- Historic Satellite Imagery.

4.3.4 Mr and Mrs Barnett purchased the site in 1998. The signed statutory declarations submitted by them set out how they developed the garden since they purchased the property including a vegetable patch to the southwest of the house and more open area to the west used as lawn.

4.3.5 The descriptions, photographs and aerial photographs in the statutory declarations present information showing the three distinct areas around Roseview Cottage as being maintained, developed and used by the occupiers of the property over a period in excess of 10 years.

4.3.6 In view of the submitted evidence, it is considered that on the balance of probability, the areas of land within the red line on the submitted Location Plan have been continuously used as a domestic garden associated with Roseview Cottage for over 10 years. Therefore, the land can continue to be used in this manner with immunity from enforcement action.

5.0 **Recommendation**

5.1 That a certificate of lawfulness be ISSUED for the following reason:

The evidence submitted within this application supports the view that, on the balance of probabilities, the land outlined in red on the submitted location plan has been in use as domestic residential garden for a period in excess of 10 years. In accordance with Section 171B of the Town and Country Planning Act 1990 (amended), no enforcement action can be taken upon a breach of planning control if a period of 10 years has passed from the date on which the use began. Therefore, a certificate of lawfulness can be issued for the continued use of the land as a domestic residential garden.

Signed  Anne McDonald	Development Management North Hertfordshire District Council Council Offices Gernon Road Letchworth Herts SG6 3JF
Determining Officer Date: 14 September 2026	