

Planning Statement

**Application under Section 171B of the Town and Country Planning Act 1990 for a lawful development Certificate for an Existing Use:
Domestic Garden Land**

In respect of:

Rose View Cottage, Gosmore Road, Hitchin, SG4 9BG

On behalf of

Mr & Mrs Barnett

Date of Document

June 2026



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1.0 Introduction

- 1.1. McLoughlin Planning has been instructed by Mr & Mrs Barnett (The Applicants) to prepare and submit a Lawful Development Certificate (LDC) application for an Existing Use at Rose View Cottage, Hitchin (The Site). The Site consists of a single C3 dwelling, which the applicants have occupied for over 20 years. This application seeks to establish that no enforcement can be taken in relation to land being used as a domestic planning unit for over 10 years, with reference to Section 171B(3) of the Town and Country Planning Act 1990.
- 1.2. The supporting evidence set out in this Statement and accompanying documents provides compelling evidence that, on the balance of probability, the section of land in question has been continuously used as a domestic planning unit for over 10 years. Therefore, the land can continue to be used in this manner with immunity from enforcement action.
- 1.3. This Statement is structured as follows:
 - Section 2 – Site Description and Planning History
 - Section 3 – Legislative Context and Relevant Guidance
 - Section 4 – Evidence on behalf of the Applicant
 - Section 5 – Conclusions



2.0 Site Description & Designations

Site Description

- 2.1. The site in question relates to Rose View Cottage and land associated with the property. Rose View Cottage is located to the South of Hitchin, adjacent to, but not within the Settlement Boundary for Hitchin. The site is accessed off Hitchin Road, which offers direct access, including footways, into the centre of Hitchin. Rose View Cottage is Grade II Listed and located within the Greenbelt. The site is entirely within Flood Zone 1 (Low Risk) and has no other planning designations.

Property's Planning History

- 2.2. For the Council's ease of reference, planning applications associated with the property have been listed below:
- 03/01926/1HH & 03/01927/1LB – Two and single storey rear extension. New roof to existing single-storey side extension – January 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 Legislative Context and Relevant Guidance

- 3.1. The Application is made under Section 171B(3) of the Town and Country Planning Act 1990 (as amended). The Application seeks to establish that, irrespective of any former or underlying agricultural use of the land in question, the land has been used continuously as part of the domestic planning unit associated with Rose View Cottage for a period exceeding 10 years. Section 171B(3) 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."

- 3.2. In considering the evidence, the courts have decided that the relevant test to be applied is whether, "on the balance of probability", the site has been used as an open market dwelling for the requisite period. This is a lesser test than the criminal burden of proof, namely "beyond reasonable doubt". Therefore, the relevant test requires a degree of pragmatism.

- 3.3. F W Gabbittas V SSE and Newnham LBC (1985) found that:

"The applicant's evidence does not need to be corroborated by 'independent' evidence to be accepted. Suppose the LPA has no evidence of its own or from others to contradict or make the applicant's version of events less probable. In that case, 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."

- 3.4. The Government's Planning Practice Guidance (PPG) reiterates the above-mentioned legislative provisions, stating:

"Where local planning authorities are satisfied that the appropriate legal tests have been met, it will grant a Lawful Development Certificate."

- 3.5. Paragraph 005 of the PPG makes it clear that applications:

"must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application", and "without sufficient or precise information, a local planning authority may be justified in refusing a certificate."

- 3.6. Therefore, the burden of proof to demonstrate the lawfulness of the use rests firmly on the applicant. However, paragraph 006 also makes it clear that:



"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."

- 3.7. The evidence submitted by the Applicant to demonstrate the lawful dwelling is provided in the following Section of this Statement.



4.0 Evidence on Behalf of the Applicant

- 4.1. Section 39 of the Town and Country Planning (Development Management Procedure Order) (England) 2015 states that Certificates of Lawfulness must be accompanied by the evidence necessary to verify the information included in the application. This section of the Statement provides a catalogue of the Applicant's evidence enclosed with the Lawful Development Certificate Application.
- 4.2. The land has been used as part of a domestic planning unit by Mr & Mrs Barnett continuously since 1998, when they started occupying the property. The following information submitted as part of this application supports this:
- 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. The application is supported by statutory declarations provided by the applicants and an individual with direct and longstanding knowledge of the Site and its use. The declarations provide a clear, consistent and unambiguous account of the historic use of the land and are supported by historic photographs, sales particulars and aerial imagery, all of which present a coherent picture of the land's longstanding domestic use.
- 4.4. The evidence confirms that whilst aerial imagery identifies three distinct areas within the garden, these areas have continuously functioned as a single domestic garden associated with the dwelling. Although the character and landscaping of the individual areas have evolved over time, they have remained physically and functionally connected and have been used as part of the same residential planning unit throughout. Accordingly, the evidence demonstrates, on the balance of probability, that the three garden areas identified on the aerial imagery have been continuously used by Mr & Mrs Barnett as domestic garden land for over ten years and are therefore lawful.

Aerial Imagery

- 4.5. This submission also contains web-based imagery sourced from Google maps, which all show the site as part of the associated domestic planning unit. This is of particular



use, as it provides a dated snapshot that shows the land at various points in time. The images taken from 2007, 2010, 2016, 2018, 2024 & 2025 (exhibited as Appendix 1) all clearly show the site with the associated domestic planning unit, which is consistent with evidence provided within the Statutory Declarations, which confirm that the use of the site and that the site has been continuously used as a domestic planning unit during this time.

- 4.6. On the basis that the aerial-view web-based mapping corroborates with the site's planning history and the Statutory Declaration, we consider that this should be afforded substantial weight in confirming that the site's use, as a residential garden, is lawful.
- 4.7. The evidence submitted is unambiguous and demonstrates that, for at least 10 years, the land in question has formed part of the domestic planning unit for Rose View Cottage, Hitchin.



5.0 Conclusion

- 5.1. The purpose of this Planning Statement has been to support the Lawful Development Certificate Application for the existing use of land as a domestic planning unit at Rose View Cottage, Hitchin. In doing so, this statement sets out the site context, including planning history, before setting out the relevant legislative context for this application. The statement then moves on to set out the evidence provided by the applicant, including statutory declarations, images of the land being used and sales particulars from the property purchase in 1998. The evidence demonstrates that on the balance of probability, the land in question has been used as a domestic planning unit for a period of time in excess of 10 years.
- 5.2. The PPG advises that it is reasonable for a Local Planning Authority to inquire and seek evidence from other sources when considering a Certificate of Lawful Use application.
- 5.3. However, paragraph 006 of the PPG states that if a Local Planning Authority has no evidence itself or from another 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 granting of a certificate on the balance of probability.
- 5.4. The applicant is unaware of evidence contradicting their version of events and the timeline of using the property, as set out above.
- 5.5. The balance of probability test requires a degree of pragmatism and reasonableness from the decision maker when weighing all the evidence in the overall balance.
- 5.6. The evidence and this Statement represent a clear, consistent and unambiguous case, with no reason to give this evidence anything other than significant weight. Therefore, on the balance of probability, a certificate of existing lawful use of land should be issued, confirming the continued use of land as a domestic planning unit.



Appendix 1 – Dated Aerial Imagery sourced from Google Maps



Google Earth - 2000



Google Earth - 2007



Google Earth - 2010



Google Earth - 2016



Google Earth - 2018



Google Earth - 2024



Google Earth - 2025





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