



## **PLANNING STATEMENT**

**SITE:** LAND AT OXENRIGGS BARN EGREMONT CA22 2PH

**APPLICANT:** MR JOHN JARROD PRINGLE

### **PLANNING STATEMENT TO ACCOMPANY AN APPLICATION FOR A CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT**

#### **1. INTRODUCTION**

- 1.1 An application is respectfully submitted for a Certificate Of Lawfulness Of Existing Use or Development to regularise the existing use of land as garden land ancillary to Oxenriggs Barn, Egremont.
- 1.2 This statement has been prepared on behalf of the applicants to accompany the application form for a Certificate of Lawfulness Existing Use or Development.
- 1.3 The purpose of this application statement is to demonstrate that based on the strength of facts and evidence presented, and in accordance with the applicable legislation in force, the land belonging to the applicants as shown on the plan contained in this statement has been used by them as residential garden land ancillary to the dwelling for a period of over 12 years.
- 1.4 An assessment of this application will show that the strength of the applicant's evidence presented with this statement is compelling.

#### **2. THE LEGISLATION**

- 2.1 The application is submitted in accordance with s.191 of the Town and Country Planning Act 1990, as amended.
- 2.2 Under s.191(a) if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations, or other matters.

- 2.3 Under s.191(2)(a) uses and operations are lawful at any time if 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).
- 2.4 Under s.191(4) if the local planning authority is provided with information satisfying it of the lawfulness of the use at the time of the application, (or that description as modified by the local planning authority or a description substituted by it), it shall issue a certificate to that effect.
- 2.5 Under s.191(5) a certificate shall:
- (a) Specify the land to which it relates.
  - (b) Describe the use, operations, or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class)
  - (c) Give the reasons for determining the use, operations, or other matter to be lawful; and
  - (d) Specify the date of the application for the certificate.

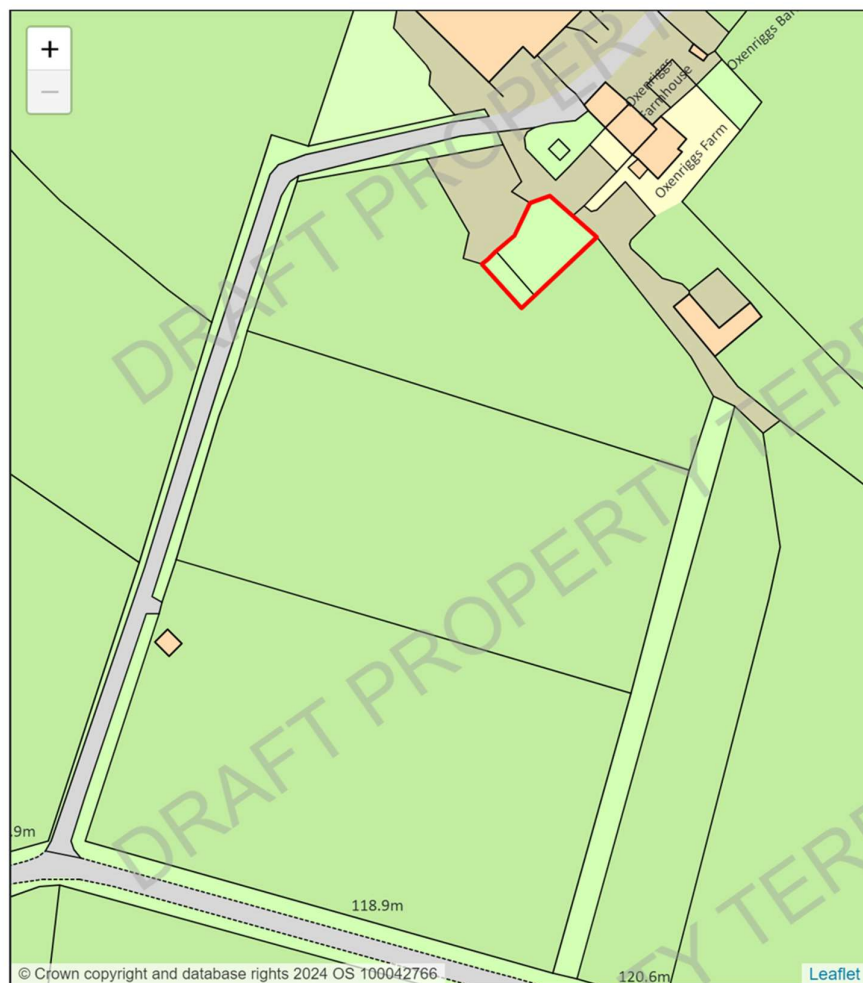
### **3. BURDEN AND STANDARD**

- 3.1 In order to satisfy a local planning authority that a Certificate should be granted, the courts have held the relevant test of the evidence submitted by an applicant should be the civil law test of the balance of probabilities.
- 3.2 We will demonstrate throughout the statement that this test is unequivocally met when considering the evidence in the Applicant's favour.
- 3.3 We respectfully remind the LPA that when assessing this application, it must do so based on the evidence alone, rather than considering planning merits or policy in force.

### **4. THE APPLICATION**

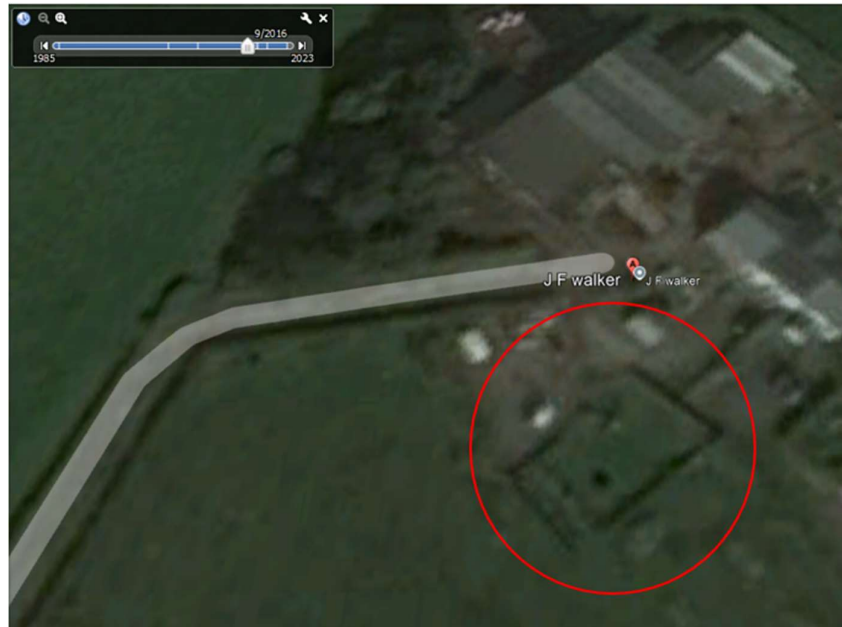
- 4.1 The applicants are seeking a Certificate Of Lawfulness of Existing Use or Development under section 191 of the Town and Country Planning Act 1990 in respect of the use of their land as residential garden land ancillary to their dwelling for a period of over 12 years. **A statutory declaration sworn by the Applicant - Mr John Jarrod Pringle will accompany this application.**
- 4.2 The Applicant purchased the barn and associated land on the 1<sup>st</sup> December 2008. The title to the land is registered at HM Land Registry under title number CU244676.

- 4.3 The Applicant fenced off a parcel of their land to be utilised as garden land for their children to play safely in and for them to grow vegetables. This happened in 2010 as confirmed in the sworn statutory declaration of the Applicant.
- 4.4 The use of the land as garden land has been confirmed by the owner of Oxenriggs farm to which the Applicant's property and land formally belonged to. The farm owner confirms the area being fenced off and used as garden land by the Applicant and his family prior to 2012. The use has also been confirmed by a builder who was on site from 2011 to 2014 carrying out construction works to the barn on the property. Dated photographs from this time accompanying this application clearly show the land as fenced off with children's play paraphernalia shown on the garden land.
- 4.5 The extent of the land used as garden land ancillary to the dwelling is shown on the plan below:



- 4.6 The Applicant, and his immediate family have utilised the land as garden land since 2010 and they continue to cultivate and use the land as garden land to the current date. There has been no interruption of the use during this period of time.

Unfortunately, there is jump on Google Earth between 2008 (prior to the use of the land) and 2016. However, the photographs below taken from 2016 clearly show the land fenced off and utilised as garden land.



The photographs below from Google Earth dated 2018 clearly shows the garden land edged in red with a children's trampoline in situ – the area hatched blue is a vegetable allotment.



The photo below is dated 20<sup>th</sup> May 2014 – this photo clearly shows the area of garden land fenced off and the climbing frame in situ



- 4.7 The Sworn statutory declaration by the Applicant clearly confirms the use of the land as garden land from 2010:-

*In approximately 2010 we fenced off a portion of the land and created a garden area*

*The area of the land has been used as residential garden land by myself, my wife and our three children continuously since 2010. Part of the land was used as an allotment for growing vegetables with the remaining land being a lawn – over the years there has been a climbing frame, Trampoline and goal posts in situ on the land used by our children.*

*We have maintained and cultivated the land as garden land and have continued to do so to the current date.*

The Applicant has quite clearly confirmed the fencing off and the use of the land as garden land for more than the required period of time. Given that any person who lies about the information contained within a Statutory Declaration could be prosecuted and if convicted could be sentenced to time in prison, the information contained with Statutory Declarations must be apportioned significant weight in an Application.

- 4.8 It is important to consider the character of the garden and to understand the relationship the owner has with the land and space to determine whether it is garden or not. There really can be no ‘one size fits all’ approach to a garden and we ask that the LPA be mindful of this when assessing this Application.
- 4.9 In terms of the use of the site, there is no statutory definition of what constitutes a garden. Central Government do provide a definition of what they consider to be a garden for CGT purposes being; ‘a piece of ground, usually partly grassed and adjoining a private house, used for growing flowers, fruit or vegetables, and as a place

of recreation.' The evidence provided with this Application clearly shows the use as garden land.

4.10 The use of the land has not been agricultural nor has it been used as a paddock. To refuse to certify this land as garden land, you would therefore have to reach a conclusion that it is either agricultural land/paddock (when it clearly isn't) or that it has some other use that is neither garden or paddock. The applicant has had full use of the garden land, as have his family, for over 10 years. The evidence clearly supports this.

4.11 Applying this section of the legislation to the facts of this application we can clearly demonstrate in the evidence presented that the use of the land as garden has been ongoing continuously for over ten years and therefore, the time for taking any enforcement action has expired.

4.12 Based on the weight of the evidence presented within this application, we submit the Local Planning Authority will be satisfied that the use of the land as garden land is lawful and a Certificate of Lawfulness for Existing Use or Development should be granted.

4.13 We respectfully request that Certificate of Lawfulness for Existing Use or Development is issued to regularise the use of the land as garden land ancillary to the dwelling.

## **5. CONCLUSIONS**

5.1 The evidence presented with this application is clear, precise, and unambiguous and the fact that the evidence is corroborated is significant.

5.2 In order to grant a Certificate of Lawfulness for Existing Use or Development, the applicant must prove that the land has been used as garden land for the last 10 years which has been achieved by virtue of the statutory declaration, witness statements and evidence submitted with this application.

5.3 It is respectfully submitted that on this basis, the applicant has exceeded the civil law standard of proof required, namely on the balance of probabilities.

5.4 Upon an assessment of the overwhelming evidence presented we submit the LPA is drawn inexorably to one conclusion. This being that a Certificate of Lawfulness for Existing Use or Development should be issued. On that basis we respectfully request that this application is granted.

## **6. RECOMMENDATION**

6.1 The Planning Authority is respectfully requested to approve this application and grant the Certificate of Lawfulness for Existing Use or Development.

**HEAL Planning  
11 St Mary's Place  
Shrewsbury  
SY1 1DZ**

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**Supporting documents to accompany this statement:**

**RE: LAND AT OXENRIGGS BARN, EGREMONT, CA22 2PH**

- **EXHIBIT 1 – Statutory Declaration**

**John Jarrod Pringle - Applicant**

**EXHIBIT 2 – Witness Statements**

**John Slater – Builder**

**John Walker – neighbouring farm owner**

- **EXHIBIT 3 – Dated photographs show the use of the land as garden land from 2012.**
- **EXHIBIT 4 – Registered title and filed plan**