

CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE

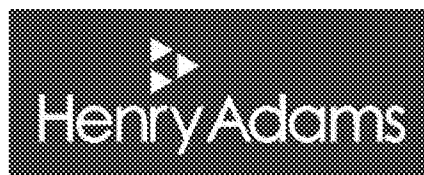
SUPPORTING STATEMENT FOR:

**The Lawful Use of land as residential
curtilage**

at

**Clayton, The Avenals, Angmering,
West Sussex BN16 4AN**

On behalf of Mr & Mrs Williams
September 2020



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1. Introduction

- 1.1. This Certificate of Lawfulness application seeks to regularise the use of the land to the north – east and west side of the residential property Clayton for use as garden land associated with the dwelling. The land has been used as garden land associated with Clayton for in excess of 10 years, from a base date of 25 August 2010.
- 1.2. It is requested that this Statement be read alongside the Statutory Declaration from the applicant, Mr Williams and Rachel Dowson who has occupied the adjacent property, Meadow End since November 2009, which is referred to as evidence to support the application below.

2. Planning Policy & Legislation

Town and Country Planning Act 1990 – time limits and test

- 2.1. Section 171A of the Town & Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) is of relevance as it states:

- (1) For the purposes of this Act –*
- (a) carrying out development without the required planning permission; or*
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.'*

constitutes a breach of planning control

- 2.2. Under section 171B (3) of the Town and Country Planning Act 1990, as amended, it is confirmed that in the case of any other breach of planning control (that not listed in 171B (1) and (2)), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

2.3. The proposal relates to the use of land associated with Clayton as residential curtilage associated with the main dwelling.

2.4. Section 191 of the TCPA 1990 states the following:

(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 matter.*

(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.*

(3) *For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if:*

- (a) *the time for taking enforcement action in respect of the failure has then expired; and*
- (b) *it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.*

- (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.*

National Guidance

- 2.5. The application seeks a Certificate of Lawfulness (CLEUD) to demonstrate that the use of land to the east and north-east of Clayton has been in use as part of the properties residential curtilage for in excess of 10 years.
- 2.6. Guidance is set out in section ID 17c of the Planning Practice Guidance (PPG). This notes that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force or for which planning permission is not required.
- 2.7. The Guidance notes that the Applicant is responsible for providing sufficient information to support an application. The evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (PPG ID: 17c-006-20140306).
- 2.8. The Applicant's evidence does not need to be corroborated by independent evidence. However, in practice it is usually helpful for contemporaneous evidence to be provided to corroborate the Applicant's own version of the history of the use (PPG ID17c-006).
- 2.9. Paragraph ID17-008 of the PPG makes clear that views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Planning History

- 2.10. There is one planning application relating to the site, which is considered relevant:

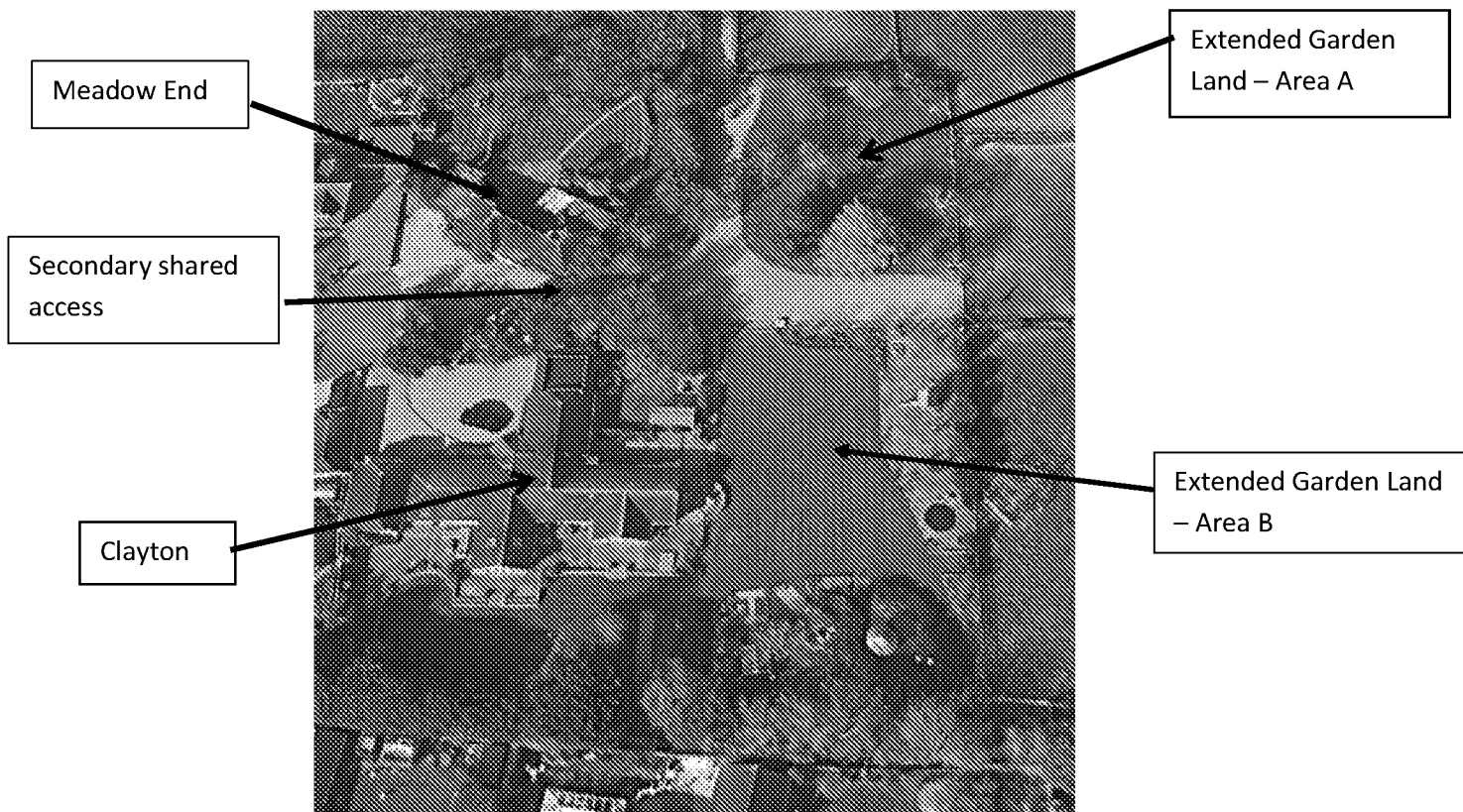
Reference	Proposal	Decision
A/41/11/	Single storey side extensions & porch	Approved
A/100/11/BR	Side extensions	Passed Conditionally 22/06/2011

- 2.11. The reason this permission is considered relevant is that when the planning officer would have visited the site, the residential curtilage had already been extended in to the former paddock and any photographs taken by the officer at the time, which may still be on the planning file, will confirm this.
- 2.12. The photographs produced at HA-Appendix 6, taken during the construction of the approved extension, also confirm that the boundary to the garden had already been moved and the garden laid to lawn.

3. Site Description

- 3.1. The application site take in the property Clayton and its associated residential curtilage. This is considered to extend to the south, east and north-east of the property. Clayton comprises a detached bungalow which has red brick elevation walls and a tiled, Sussex hipped roof. There is a detached garage to the west.
- 3.2. The site is located at the end of a cul-de-sac which is lined by an informal layout of detached dwellings, the majority of which are bungalows. There is a single detached two storey dwelling at the point where the road turns east. A number of the bungalows have been extended to the side and/or rear whilst 'Walnuts', a nearby property to the north has had dormer windows formed in the roof. There are paddocks to the immediate east of the site.

- 3.3. Access to the site is via the original driveway serving Clayton and shared gravel driveway located to the north of Clayton and shared with Meadow End. This leads round the garden area to the north-east of Clayton. This garden area is connected by a gateway from the extended garden area to the east of Clayton.
- 3.4. Included below is an aerial photograph of the site, identifying the location of the dwelling and surrounding land.



Aerial view of site

4. Evidence

- 4.1. The application is supported by sworn statements prepared by the applicant, Mr Williams, who along with his wife are the owners of the properties Clayton and Meadow End. A Sworn Statement is also prepared by Rachel Dowson, who is the tenant of Meadow End. Rachel Dowson has occupied Meadow End since November 2009 and has kept horses on the paddocks to the east since 2001, 2 years prior to Mr & Mrs Williams purchasing Meadow End.
- 4.2. The submission is supported by Land Registry plans and titles for both Meadow End and Clayton, photographs taken during the construction of extensions at Clayton in 2011.
- 4.3. The application is also supported by aerial images covering the period of 2012 to 2019.

Applicant's Sworn Statement

- 4.4. The application is supported by a sworn statement prepared by the applicant Mr Williams, who is the owner of Clayton and Meadow End. This confirms the following:
 - The applicant purchased the property in 11 September 2007 and remain the owners to date of the land edged in red and blue on 'Plan A' attached to his Declaration. This includes the property Meadow End, which he purchased on 15 December 2003.
 - At the time of purchasing the property, the area of land to the east of the property Meadow End (as shown hatched red and marked 'garden area A' on 'Plan A') formed part of the extended garden of this property.
 - Following the purchase of Clayton, the garden area to the east of Meadow End was then taken as part of garden serving Clayton, together with part of the paddock east of Clayton. The former paddock land was landscaped and used as garden land from November 2009.
 - Since vacating Meadow End in November 2009, this property has been rented to a Rachel Dowson, who has kept horses on our wider land since 2003. The property has been rented without the benefit of access to the former extended garden land as shown hatched red and

marked 'garden area A' on 'Plan A'. It has been used solely as garden land associated with Clayton since November 2009.

- The applicant has since maintained both areas of land as garden land associated with our main residence, Clayton.
- It is confirmed that at no point since November 2009 has the land been used for any agricultural purposes, as defined in Section 336 of the Town and Country Planning Act 1990
- The majority of the site has been maintained as a lawn, flower and shrub beds, with domestic gardening equipment.
- Prior to the construction of extensions permitted under A/41/11, the garden land immediately east of Clayton had already been extended and the fence repositioned to form Garden Area B. Garden Area A was also in use for the benefit of Clayton at that time.
- The use of the land has been used as garden land for in excess of 10 years, from a base date of 25 August 2010.

Sworn Statement by Rachel Dowson

4.5. The application is supported by a sworn statement prepared by the Rachel Dowson, who is the occupant of Meadow End and previously kept horses on the wider land, prior to the applicant's ownership of the wider land. The statement confirms:

- Rachel Dowson has rented Meadow End from Mr & Mrs Williams since November 2009.
- Prior to Mr & Mrs Williams purchasing Meadow End in 2003, Rachel Dowson kept horses on the paddocks at Meadow End and has continued to do so to date.
- The area of land to the east of the property Meadow End (as shown hatched green and marked 'garden area A' on 'Plan A') formed part of the extended garden of Meadow End, up until 2009, when Rachel Dowson moved in to Meadow End and Mr & Mrs Williams moved in to Clayton. Since then, Mr & Mrs Williams have used this garden as theirs and linked this directly with Clayton. Other than access to the stables and paddocks, the property Meadow End does not benefit from the use of this garden area and is separated by fencing and a mature hedgerow.
- Confirms that the former paddock land to the east of Clayton was also landscaped and used as garden land from November 2009.

This area of garden land is shown hatched in purple and marked 'garden area B'. All works were undertaken by Mr & Mrs Williams.

- Since works to extend the garden, Mr & Mrs Williams have since maintained both areas of land as garden land associated with their main residence, Clayton.
- At no point since November 2009 has the land been used for any agricultural purposes, as defined in Section 336 of the Town and Country Planning Act 1990
- The majority of the site has been maintained as a lawn, flower and shrub beds, with domestic gardening equipment.
- The use of the land has been used as garden land for in excess of 10 years, from a base date of 25 August 2010.

Title Plans & Register

- 4.6. The submission is supported by the title plans associated with Meadow End and Clayton, produced at HA-Appendix 3 and HA-Appendix 4. These confirm that both properties fall in the applicant's ownership. Meadow End was purchased by the applicants on 15/12/2003 and Clayton purchased in September 2007.

Site photographs during construction of extensions in 2011

- 4.7. A number of photographs are produced at HA-Appendix 5 which show the extensions at Clayton under construction. Permission for these extensions were granted in March 2011 and Building Regulation approval approved in June 2011. From the photographs provided, it was clear that the area to the east of Clayton has already been laid to lawn and maintained as part of garden land associated with Clayton. This included the repositioning of the fence line further east.

Aerial Photographs – 2007 – 2019

- 4.8. The aerial photographs re-produced from google earth dated as follows confirm:
- 31 December 2001 - Garden Area A established and maintained as garden land associated with Meadow End

- 15 April 2007 – Garden Area A established and maintained as garden land associated with Meadow End
- 13 September 2012 – Garden Area A and B established as mature gardens and mown as lawn, with associated planting beds and domestic shrubs. Extensions at Clayton also complete. Connection between Garden Area A and B shown with a gap in the post and rail fence line.
- 6 June 2013 – As above, but additional hard and soft landscaping works taken place within garden area and maturing planting to boundaries
- 22 April 2015 – area maintained and continuing to mature as domestic garden land
- 23 May 2016 – as above, but Marquee for family wedding erected
- 8 June 2018 – as above, notably marquee removed
- 1 April 2019 – garden matured and clearly maintained as mown lawn. Children’s trampoline noted and climbing frame to the north. Both placed on loose bark chippings.

4.9. The aerial photographs clearly identify the the former garden land associated with Meadow End (Garden Area A) were established before December 2001 and from 2012, both Garden Area A and B are connected and have matured as gardens associated with Clayton.

5. Planning Legislation and Compliance Assessment

5.1. Lawful Development Certificates are based upon sections 191-193 of the Town and Country Planning Act 1990. Section 191 allows a Local Planning Authority to grant a certificate confirming that an existing use is lawful.

5.2. Section 191 (2) states that for the purposes of the Act, 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 planning permission or because the time for taking enforcement action has expired or for any other reason’.***

5.3. Section 171B of the 1990 Act specifies time limits for taking enforcement action. If action is not taken within certain time limits the breach of planning control becomes “immune” from planning enforcement action.

Relevant to the consideration of this planning application is that in the case of a change of use of an area land, no enforcement action may be taken after the end of a period of 10 years beginning with the date of the breach.

- 5.4. The Court's have held that the relevant test of evidence submitted with Certificate of Lawfulness application is '**the balance of probability**', therefore Applicants are not required to discharge the stricter, criminal burden of proof namely 'beyond reasonable doubt'. The Courts have also held (see FW Gabbittas v SSE and Newham LBC 1985) that the Applicant's own evidence does not need to be corroborated by other evidence in order to be accepted. Accordingly the Milligan's sworn statement must be accepted as credible and accurate evidence.
- 5.5. Therefore, if the Local Planning Authority has no evidence of its own, or from others to contradict or otherwise make the Applicant's version of events less probable, there is no good reason to refuse to issue a Certificate of Lawfulness. This is provided that the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate '**on the balance of probability**'.
- 5.6. Furthermore, the planning merits of the operation, use or activity are not relevant to the purely legal issues which are involved in determining a Certificate of Lawfulness application.

Assessment Period – 25 August 2010 to 25 August 2020

- 5.7. At the time of submission, there does not appear to have been any intervention from the Council, in terms of planning enforcement, therefore a base date for assessment has been taken from 10 years to the date of preparing this statement.
- 5.8. Firstly, the evidence provided as part of the sworn statements prepared by the applicant and tenant of Meadow End confirms that the use of the land as garden land associated with Clayton has been such since November 2009, 9 months prior to the assessment period outlined above. At no time since occupying the respective properties have they used the land for agricultural purposes.

- 5.9. The application is also supported by title registers and plans, confirming the date of purchase of Meadow End and Clayton, confirming both now fall within their ownership.
- 5.10. In reviewing the aerial photographs of the site, dating back to 2001, the characteristics of Garden Area A, have changed slightly, with the introduction of a clear defined boundary between Meadow End and extended garden land from 2007 onwards. However, the nature and appearance as garden land has not changed overtime, with the exception of the associated maturing of trees and planting. In terms of Garden Area B, which is the eastern extension of garden land serving Clayton, this is clearly shown as established and mature garden land from the 2012 aerial photographs. It is clearly shown laid to lawn and a boundary in place during the construction of the extensions at Clayton in 2011. The extensions were complete in the 2012 aerial photographs.
- 5.11. In comparison with surrounding land, currently used for agricultural grazing purposes, the application site clearly has a different character and appearance. The land is not worn from grazing, it does not change in terms of any potential crop being grown / harvested and the grass appears to have been cut as a lawn, comparable to nearby gardens serving other residential properties. Further evidence of the use of the site as garden land includes domestic paraphernalia, such as children's climbing frames, trampolines and ornate boundary planting.
- 5.12. It is considered that the sworn statement prepared by the applicant and long term tenant of Meadow End, together with the associated titles, photographs and aerial photographs show that Garden Area A and Garden Area B have been used continually as garden land associated with Clayton for in excess of 10 years.

6. Conclusion

- 6.1. A Certificate of Lawfulness for Existing Use is applied for at Clayton to regularise the use of the land to the east and north-east of the property as garden land associated with the dwelling.

- 6.2. The land has been used as garden land associated with Clayton for in excess of 10 years, from a based date of 25 August 2010, which is 10 years prior to the preparation of this statement. We, nor are the applicants, aware of any intervention in the use by the Council. Accordingly, this period has not been interrupted.
- 6.3. The evidence submitted in support of this application comprises the following:
- Sworn Statements by the applicant, Mr Williams
 - Sworn Statements by the tenant of Meadow End, Rachel Dowson
 - Title plans and register
 - Aerial photographs of the since dating from 2001
 - Photographs taken during construction of extensions to Clayton in 2011
- 6.4. It is considered that the evidence provided clearly demonstrates that the use of Areas A and B as garden land has been carried out for in excess of 10 years, therefore meaning that the site is immune from any planning enforcement action.
- 6.5. A review of the planning history relating to the site has not highlighted any interruption in use by the local planning authority.
- 6.6. Accordingly, the Certificate applied for should be granted for the use of the land as garden land associated with Clayton.