

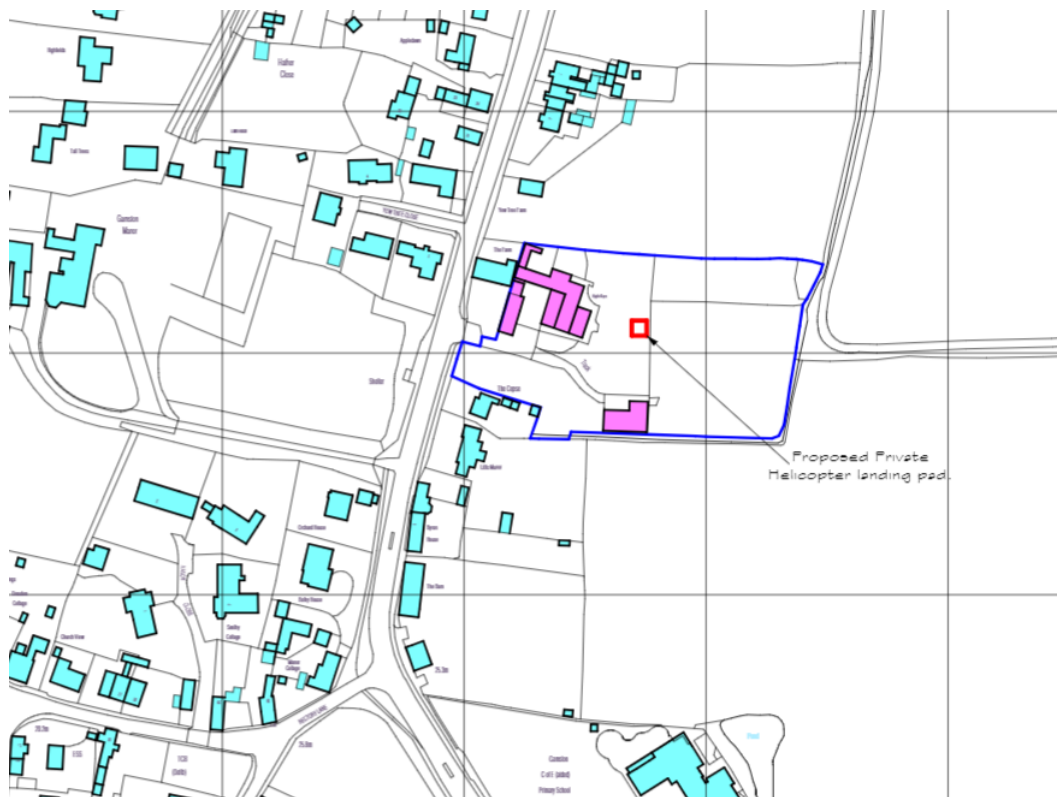
Item No: A1

Application Ref.	23/01313/CTP
Application Type	Certificate of Lawfulness - Proposed Development
Site Address	Apple Barn, Great North Road, Gamston.
Proposal	Lawful Development Certificate for the Creation of Hard Standing Area for the Landing and Take Off of a Personally Owned Helicopter.
Case Officer	John Krawczyk
Recommendation	Grant
Web Link:	Link to Planning Documents

THE APPLICATION

SITE CONTEXT

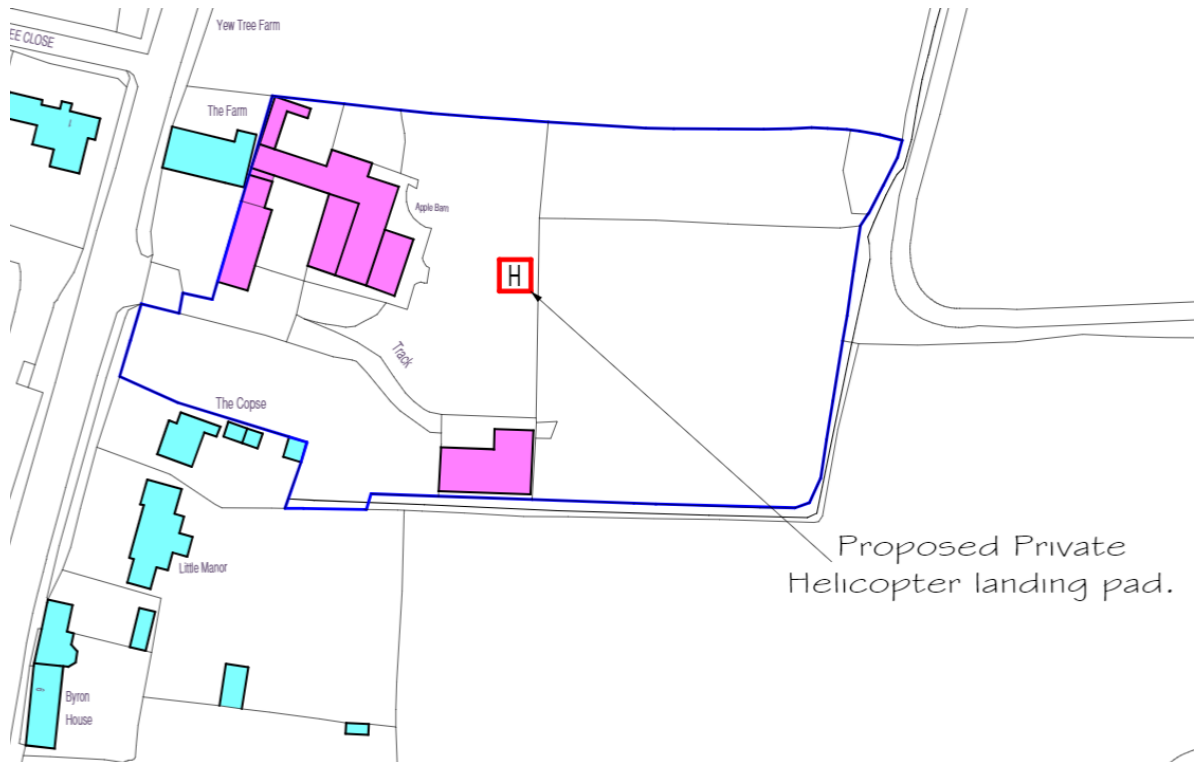
The application site comprises a parcel of land, laid to turf, equating to approximately 50sqm in area, situated approximately 16m to the east of the residential dwelling house, presently known as Apple Barn.



Apple Barn and the application site therein are located on the eastern side of Great North Road within the settlement of Gamston.

PROPOSAL

This application seeks a Certificate of Lawfulness for Proposed Development comprising the provision of an area of hardstanding, equating to approximately 50sqm in area, for the landing and taking off of a helicopter.



RELEVANT PLANNING HISTORY

23/00854/FUL - Removal of Existing Stable Block and Replace with a Temporary Building to Store Private Helicopter (Permission Sought for 24 Months, Existing Stable Base to be Re-Used for Storage Building)

CONSULTATION & PUBLICITY

As stated under para. 008 of the Planning Practice Guidance Lawful Development Certificates:

'There is no statutory requirement to consult third parties including parish councils or neighbours.'

This application was not publicised, albeit the application is accessible to the public via the Bassetlaw District Council Public Access page. In response to which 20no public comments have been received, raising objections to the application. Those comments are summarised as follows:

- There are two other related applications, namely 23/00754/FUL and 23/00854/FUL;
- Granting consent for any of these applications would lead to a helicopter being able to operate 365 days a year from the site;
- Information submitted has been misleading and incorrect and should be regarded as invalid;
- The applications have exceeded the dates for determination;
- The other pending application should be considered alongside this application;
- Does not conform to the dimensions of a domestic helicopter landing site;
- Noise impact arising from use of helicopter;
- Health and safety risk posed to nearby school and dwellings;

- Development is not necessary given proximity to and availability of Gamston Airfield;
- The conservation area should be protected from inappropriate and damaging development;
- The onsite evidence contradicts claims that the site has been used as part of the garden for 30 years;
- Curtilage issues remain unproven;
- Inadequate evidence provided to support application;
- If the application is approved an application for a permanent hangar will follow.

Whilst the public comments are duly acknowledged, it is important to emphasise the following, as per paragraph 008 Planning Practice Guidance Lawful Development Certificates, which states:

'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.'

In this instance it is acknowledged that the public comments refer to both the planning merits such as the perceived impact of the proposed operation; and, the lawfulness of the proposal.

APPLICABLE LEGISLATION AND GUIDANCE

- Section 192 Town and Country Planning Act 1990 (as amended)
- Planning Practice Guidance Lawful Development Certificates (6 March 2014)
- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- Permitted development rights for householders Technical Guidance (September 2019)

MATTERS FOR CONSIDERATION

As set out under para. 001(b) of Planning Practice Guidance Lawful Development Certificates, a Local Planning Authority can grant a certificate confirming that:

'a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.'

For the avoidance of any doubt, as stated under para. 009 of Planning Practice Guidance Lawful Development Certificates:

'Planning merits are not relevant at any stage in this particular application or appeal process.'

With the above in mind the matters for consideration are limited to whether the proposed operation (i.e. the provision of a hard surface incidental to the enjoyment of Apple Barn) would be lawful in planning terms.

ASSESSMENT

Section 192 of the Town and Country Planning Act 1990 (as amended), sets out the basis upon which the proposed use of buildings or other land; or any operations proposed, may be lawful, stating, in part:

'(1) If any person wishes to ascertain whether –

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.'

Having regard to whether the proposed operation is lawful it is important to have regard to 1) the meaning of development; and, 2) compliance with the requirements of Schedule 2 Part 1 Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015.

For ease of reference these matters are addressed in turn below.

1) Meaning of Development – Section 55

Having regard to the above it is important to note the meaning of development, as set out under section 55(1) of the Town and Country Planning Act 1990 (as amended), which states, in part:

'development', means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'

It is considered reasonable to conclude that the provision of an area of hardstanding is a building operation and therefore amounts to 'development' to which Class F, as highlighted below, applies.

2) Incidental to the enjoyment of a dwelling house - Class F

Schedule 2 Part 1 Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015 makes provision for hard surfaces incidental to the enjoyment of a dwellinghouse, stating:

'Permitted development

F. Development consisting of—

(a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or

(b) the replacement in whole or in part of such a surface.

Development not permitted

F.1 Development is not permitted by Class F if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use).

Conditions

F.2 Development is permitted by Class F subject to the condition that where—

(a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and

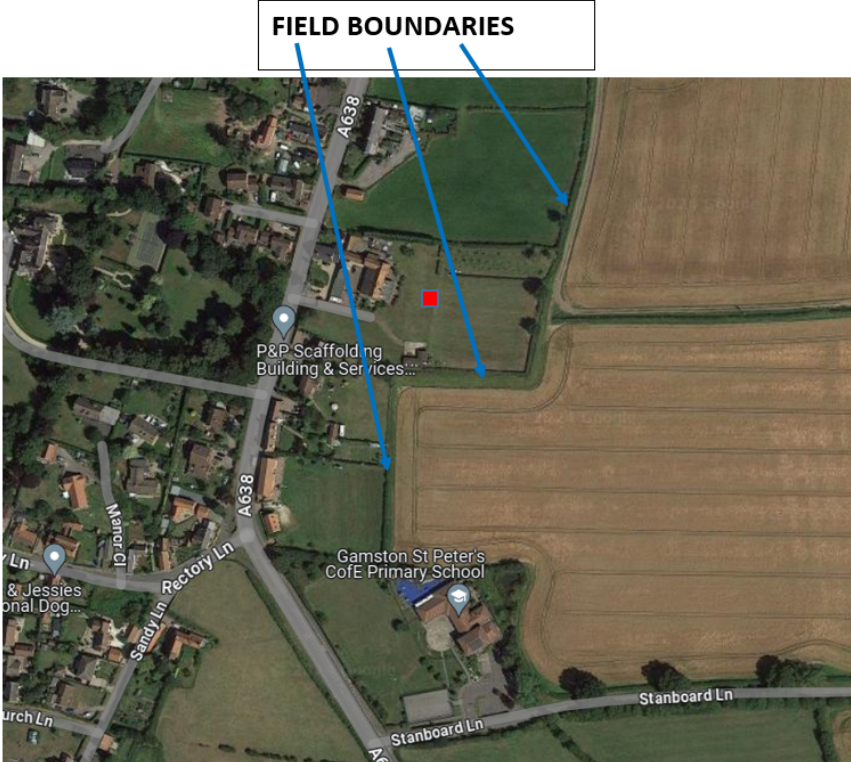
(b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres,

either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.'

Firstly, it is important to have regard to F(a) and the term '*within the curtilage of a dwellinghouse*'.

It must be acknowledged that there is no legal definition of curtilage. It is a matter of fact and degree. The term 'curtilage', it is normally defined as an area of land in relation to a building rather than a specific use of the land. It is considered that the land on which the building would be positioned is associated with the dwelling of Apple Barn.

In this instance the physical layout is such that the site of the proposed hard surface (highlighted red hatching below) is open to, adjacent to and in close proximity to the dwelling house; it appears in broad conformity with the easternmost extent of gardens to neighbouring residential dwellings and the school to the south, wherein the associated land use appears to extend up to the eastern field boundary (see extract of aerial image below); and, appears physically and visually distinct from the working agricultural landscape to the east, which is demarcated by the traditional field boundaries.



With regards to ownership and use of the land, it is understood that the applicant has been the owner/occupier of the land following the residential conversion of the redundant agricultural buildings, to which 'Apple Barn' now forms a part of, was permitted under the 1991 grant of planning permission (ref: 22/91/00007). The land to the east of the dwelling house to which the hard surface is proposed, comprises a parcel of land attached to the dwelling house, forming one enclosure with the dwelling house and containing, until very recently, a private stable block (to south of proposed hard surface) associated to the dwelling house.

The physical layout and association of the land with the dwelling Apple Barn is such that it is considered to form part of the curtilage of the dwelling house.

Returning to F(a) and the '*purpose incidental to the enjoyment of the dwelling house*'. In much the same way as the applicant may use a private car, driving to and from the dwelling house, for purposes incidental to the enjoyment of the dwelling house, the applicant may use their private helicopter in much the same way. Indeed, it must be noted, that irrespective of the provision of a hard surface, the taking off and landing of a private helicopter, incidental to the enjoyment of the dwelling house, may be undertaken without planning permission as it is associated to the authorised residential land use.

With the above in mind, section F(a) would apply in this instance, namely '*the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such*'.

Section F(b) is not applicable as the proposal does not relate to '*the replacement in whole or in part of such a surface*'.

Having regard to F.1 and where *development is not permitted* – permission to use Apple Barn as a dwellinghouse was **not** granted by way of a change of use under Class M, N, P or Q of Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such F.1 does not apply in this instance.

Turning to the *Conditions* set out under F.2.

The hard surface would not be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway. As such the use of porous materials, or to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse, is not applicable.

The proposal is therefore compliant with the requirements of Schedule 2 Part 1 Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015.

CONCLUSION

The concerns expressed by the local community in regards to the perceived impact of the development are duly noted. However, the nature of this submission (i.e. seeking a Lawful Development Certificate) is such that the matters for consideration are limited solely to whether the proposed operation (i.e. the provision of a hard surface incidental to the enjoyment of Apple Barn) would be lawful.

As set out above, the proposed operation amounts to development, to which provision is made under Schedule 2 Part 1 Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015. In turn, the proposal is compliant with the requirements of the above and is therefore deemed to be lawful.

RECOMMENDATION:

- 1) Grant Certificate of Lawful Development for the Creation of Hard Standing Area for the Landing and Take Off of a Personally Owned Helicopter