Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/26/1524
Rowan, Two Mile Ash, Horsham, West Sussex, RH13 0LA

DESCRIPTION:

Use of land as residential curtilage incidental to the enjoyment of the dwellinghouse (Lawful Development Certificate - Existing).

RELEVANT PLANNING HISTORY:

DC/16/0525	Erection of a single storey rear extension (Certificate of Lawful Development - proposed)	Application Permitted on 11.04.2016
DC/22/2316	Installation of 22no ground mounted solar panels.	Application Permitted on 23.02.2023
DC/23/1295	Reduction of existing roof overhang to the front elevation at ground floor. Installation of a flat roof canopy to main entrance and window alteration.	Application Permitted on 30.08.2023
DC/24/0757	Change of use of swimming pool to include commercial use	Application Refused on 12.08.2024
DC/25/0606	Change of use of existing swimming pool to allow mixed private and commercial use.	Application Refused on 05.12.2025
DC/25/0812	Erection of a ground floor infill extension. Change of roof tiles and changes to material finish on all elevations.	Application Permitted on 08.07.2025
DC/25/1834	Retention of children's play equipment and zipwire platform and extension of residential curtilage. (Retrospective).	Application Refused on 08.04.2026

Enforcement Case History

EN/25/0192	Alleged: Creation of platforms for a zip wire on land outside of residential garden curtilage without planning permission	Case Closed – Application Received
EN/26/0174	Unauthorised platforms for a zip wire on land following refusal of application DC/25/1834	Investigation Ongoing

SITE LOCATION & APPLICATION DESCRIPTION

The Application site is within the Parish of Southwater, located outside of any built-up area boundary and therefore sits within a countryside location for planning policy purposes. The site is not within a conservation area, is not subject to any heritage constraints and there are no Article 4 Directions, or applicable enforcement notices covering the site. This application relates to the parcel of land to the southeast of Rowan and will be referred to as the ‘Land’ going forward.

PLANNING ASSESSMENT

The Application seeks a Lawful Development Certificate to confirm the continuous Use of this parcel of land as being residential curtilage incidental to the enjoyment of the dwellinghouse, Rowan, for a period in excess of ten years.

Article (2) of Section 191 of the Town and Country Planning Act 1990 states:

"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."

The Land and matters subject of this Application are not subject of an extant enforcement notice, as such, there would be no automatic exemption from the grant of a certificate of lawfulness by virtue of the provisions of S.191(2)(b) TCPA 1990.

Applicant's Evidence

- Location Plan, reference 7800
- Cover Letter
- Statutory Declaration – Amit Rameshchandra Patel

  Mr Patel confirms that he and his wife purchased Rowan in June 2022 and are the registered owners of the site. He describes the application 'Land' and as "extended garden land" forming part of the residential curtilage of the dwellinghouse and states that it has been used as such throughout his ownership.

  The declaration explains the arrangement of the site, including the main garden, swimming pool building, vegetable growing area, play equipment, solar panels, climbing frame and zip wire. It states that the larger area of 'Land' to the south comprises an open landscaped area used as extended garden land. The declarant states that, when purchased, this area already contained mown pathways around the perimeter and across the site, with a central area used for family games.

  The declarant states that since acquiring the property he has undertaken works to level and maintain the land, arranged regular mowing and general maintenance, and carried out management of vegetation and boundary trees. He explains that maintenance levels vary seasonally, with less work undertaken during autumn and winter months.

  The declaration further states that the land has been used by the family and their visitors for domestic recreational purposes, including children's play, family gatherings, parties, informal sports and other leisure activities. It is asserted that movable football goals have been present on the land since at least March 2024 and that visitors have occasionally parked vehicles on parts of the site whilst attending family gatherings.

  Mr Patel states that he has received no objections or complaints regarding the use of the land as an extension to the residential curtilage and asserts that, during his ownership, the land has been used continuously as garden land and for no other purpose. The declaration is supported by a number of exhibits and due to the high volume of evidence is not detailed in full here. This evidence includes a site plan, Land Registry title documents, planning permission documents and associated plans relating to solar panels, aerial imagery, historic property sale particulars, contractor quotations and invoices relating to maintenance and landscaping works, and a series of photographs which are intended to demonstrate the use and maintenance of the land for domestic recreational purposes between 2022 and 2026.

The Statutory Declaration is signed and witnessed by a Solicitor, dated 23 September 2026.

- Statutory Declaration – Trevor Jones

  Mr Jones confirms that he and his wife owned Rowan between November 2012 and June 2022. He states that the application land formed part of the residential enjoyment of the property throughout their ownership and describes it as "extended garden land" located beyond the main domestic garden.

  The declaration explains that there was originally no physical boundary between the garden and the application land, although a fence was installed in 2018 to contain a family dog and deter deer. Mr Jones states that the land contained mown perimeter and diagonal pathways together with a central circular area, which were maintained throughout their ownership by professional gardeners.

  The declarant states that the land was used for a range of domestic and recreational activities, including family walks, children's play, football, cricket, croquet, bonfire and firework events, dog exercise and other family gatherings. He notes that the property was regularly occupied by visiting children and grandchildren and that the land was frequently used in connection with the enjoyment of the dwellinghouse.

  Mr Jones further states that, during the period of ownership, no complaints were received from neighbours or the Council regarding the use of the land. The declarant asserts that the land was used continuously as garden land and was not used for any other purpose. Apart from a picnic bench, no structures were installed within the field area.

  The declaration is supported by a number of exhibits and, due to the volume of evidence submitted, these are not detailed in full here. The exhibits include Trevor Jones' Land Registry title documents and title plan, a series of dated photographs intended to demonstrate the use of the land for domestic recreation and enjoyment, and Google Earth aerial imagery from 2012 to 2022 showing the appearance and management of the land during the declarant's ownership. The evidence is submitted to support the assertion that the land was maintained and used as an extension of the residential garden throughout the period between 2012 and 2022.

  The Statutory Declaration is signed and witnessed by a Solicitor, dated 3 September 2026.

<u>Council's Evidence</u>

- Planning Compliance History
- Site's Planning History
- Southwater Parish Council Consultation Response

  The Parish Council confirm they object to the application, stating the land has consistently been identified as a field or paddock outside the residential curtilage within the previous planning applications (DC/22/2316, DC/24/0757 and DC/25/0606). The Parish does not consider that the occasional recreational use, grass cutting or family activities demonstrate a material change of use to residential garden land. The Parish also notes the objections submitted by neighbouring residents, whose longstanding knowledge of the site raises significant questions regarding the claimed continuous residential use over a ten-year period. The Parish considers that the evidence provided does not sufficiently demonstrate, on the balance of probabilities, that the land has been continuously used as residential garden land for the required period. Accordingly, Southwater Parish Council requests that the Lawful Development Certificate be refused.
- Google Earth Imagery
- Lawful Development Questionnaire – Backsett

  The respondent states that they have lived at the adjoining property since 2000 and have long-standing knowledge of the site. They contend that the land has remained a field throughout this

period and raise concerns regarding the zip wire and raised platform, citing overlooking into their property and noise disturbance when the equipment is in use. They consider that the evidence does not demonstrate that the land forms part of the residential curtilage.

Further representation comments

The respondents state that they have lived adjacent to the site for nearly 27 years and state that the land has historically functioned as a field rather than residential curtilage. They refer to previous planning applications and site plans which, in their view, consistently distinguish the field from the domestic garden and describe it as a paddock, field or land outside the residential curtilage. They also raise concerns regarding the zip wire and associated overlooking and noise impacts, and consider that the evidence submitted does not demonstrate continuous garden use of the land for the requisite period.

- Representation Comments - Westlands

  The respondents state that they have lived at Westlands since 1987 and have long-standing knowledge of the site. They contend that the application site has historically been used as a field or paddock rather than residential curtilage, citing previous planning submissions and other evidence which describe the land as separate from the domestic garden. They therefore consider that the applicant has not demonstrated continuous residential use of the land for the required period and request that the application be refused.

- Lawful Development Questionnaire – Danesgate

  The respondent states that they have lived at the property for forty years, raising issue with the noise generated from the zipwire when in use. They further state that the property already has a large garden and field and raises concerns relating to the location of the play equipment/zipline and the overlooking issues being experienced by immediate neighbours. They stated historically the field in which zipline is located, belong to Backsett Cottage.

- Lawful Development Questionnaire – Russet Wood

  The respondent states that they have lived at their property since October 2001, knowing the owners/occupiers of Rowan since this time. They disagree with the stance taken by the applicant as part of this application, stating that the land has always been agricultural land and at times used for grazing livestock. They raise concerns relating to the retrospective nature of the planning applications, stating that the area must remain rural in nature and that the zipline was installed on agricultural land, which at times is causing noise pollution.

- Representation Comments – Woodcote

  The respondent states that they have lived at the property since 1985, sharing a boundary with the land. They state they have known the field to be cut for hay and understand that it has been used for donkeys. They are aware of the domestic recreation, which generates significant noise at times, but has been tolerated. They further that they the installation and use of the zipline/platform, which causes overlooking issues for the property of Backsett, is unacceptable. They class the use of the land as field and raise issues with inappropriate development if this use changes.

- Lawful Development Questionnaire – Fairlands

  The respondent states that they have lived in their property since October 2011 and are aware of the site. They raise issues with the use of the zipwire, and the noise pollution generated as a result. They state that the field to the rear of their garden has always been a field, rarely seeing any persons on the land and ask that the field remains as such.

Section 191(4) of the Town and Country Planning Act 1990 states that:

"*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…they shall issue a certificate to that effect; and in any other case they shall refuse the application*."

The Court held in F W Gabbitas v SSE and Newham LBC [1985] JPL 630 that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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".

Planning Assessment

The matter before the Council relates to whether the submitted evidence is sufficiently precise and unambiguous to justify the granting of a certificate relating to the change of use of the 'Land' having formed the residential curtilage of Rowan. The applicant maintains that the change of use commenced and has been ongoing for a period in excess of 10 years prior to the date the Application was received. The applicant has submitted two Statutory Declarations, both of which contain extensive exhibits, and whilst this has been summarised previously in this report, is detailed again as follows:

In 2013, the former owners Mr and Mrs Jones, erected a fence and created a sub paddock that housed a potting shed, greenhouse, vegetable plots and chicken enclosure. Their submitted Statutory Declaration states that the 'Land' was already extended garden land but does not include reasoning or evidence to support this stance, solely stating that the lack of fencing meant both the residential curtilage and the 'Land' had become merged. This enclosure remains unchanged to the present day. This sub paddock falls outside the redline of this current CLUED Application, however, it appears from the submitted details relating to the use of this sub paddock, that it would still fall within the definition of agriculture, as per Section 336 of the Town and Country Planning Act 1990.

In 2018, a further fence was erected in the northwest corner of the site, serving the purposes of keeping their dog within their grounds and preventing deer from entering the main garden. The 'Land' had distinct mowed areas when Rowan was purchased, and this was carried on during the course of the Jones' ownership, with the paths mowed regularly and the surrounding areas mowed once a year in Autumn. Mr Jones' details that the 'Land' was used for family recreational purposes during the course of their ownership, events such as bonfires/firework displays, a play area for children, parties, an area to play games and to exercise their children. The frequency of this use has not been outlined within their declaration, stating it was used "frequently", with the exhibited photos shown as being in 2017, 2018 and 2021. This declaration finishes by stating that the 'Land' during their ownership was solely used as extended garden land and for no other purpose, with no permanent structures installed.

In June 2022, the ownership of both Rowan and the 'Land' was transferred to Amit Patel and Priya Patel. Their Statutory Declaration states that in May 2025, the fence sited in the northwest corner of the site, previously used by the former owners to keep their dog safe, was removed. In March and April 2025, a climbing frame was installed to the west of the sub paddock, with the grass mowed fortnightly by a contractor. At the same time, a zipline and associated development was installed to the south of the sub paddock. This declaration continues that the 'Land' was landscaped when purchasing the land from the previous owners, which refers to the mowed areas with a central point and protruding paths. Since 2023, the Patels have employed contractors to manage the 'Land', which includes landscaping works, seeding, rolling and regular mowing, which is undertaken on a regular basis. The declaration continues by stating that the 'Land' has been used for family gatherings and parties, sports and recreational activities since the acquisition, in which moveable goals are positioned on the 'Land'. The frequency of this use has not been outlined within the declaration, but the exhibited photos shown as being in June, August, September 2022 and 2026. This declaration finishes by stating that the 'Land' has been used solely as extended garden land and for no other purpose.

Having regard to the Statutory Declarations and supporting evidence submitted, it is necessary to consider whether, on the balance of probability, the evidence is sufficiently precise and unambiguous to

demonstrate that the ‘Land’ has been used as residential curtilage incidental to the enjoyment of the dwellinghouse continuously for a period of at least ten years prior to the submission of the application.

In addition to the evidence submitted by the applicant, the Council has received a number of representation comments and Lawful Development Questionnaires from properties that share a boundary with the application ‘Land’. It is noted that these responses contradict the account provided by the applicant, stating that the ‘Land’ has historically been used for agricultural purposes and ad hoc recreational/domestic activity, rather than forming residential garden land. The information provided within these submissions present a broadly consistent account of the appearance and use of the land during the relevant ten year period.

Whilst the submitted evidence demonstrates that domestic and recreational activities have taken place on the ‘Land’, including family gatherings, children's play, football, bonfires and walking, such activities do not alone, demonstrate a material change of use of the land to residential garden land or residential curtilage. Recreational use can occur on land without altering its planning status and therefore this aspect carries limited weight. Furthermore, the maintenance and mowing of paths and the regular cutting of grass is also not determinative of residential garden use alone. The key issue is whether the evidence demonstrates, on the balance of probability, a continuous and unambiguous use of the land as part of the residential planning unit for the required period. This is a stance taken by an Inspector in a case that has resemblance to this application (APP/W0340/X/22/3296597). The Inspector concluded that activities including football, cricket, parties, bonfire celebrations, camping, quad biking and the regular mowing of a paddock did not amount to sufficient evidence of a sustained material change of use to residential garden land. The Inspector found that recreational activities were often temporary or de minimis in nature and that mowing alone did not alter the character or use of the land, concluding that the evidence failed to demonstrate a continuous material change of use over the requisite ten-year period.

Furthermore, the submitted evidence does not demonstrate a sufficiently close physical and functional relationship between the established residential curtilage of Rowan and the application ‘Land’. The ‘Land’ is substantial, measuring approximately 0.99 hectares, and remains physically distinct/separate from the formal domestic garden. Whilst the land is held within the same ownership as the dwellinghouse, there is limited evidence to demonstrate that it became so intimately associated with the dwellinghouse as to form part of its residential curtilage.

The previous planning history relating to this parcel of land is also of material consideration. Planning permission was granted for the installation of solar panels in 2023, reference DC/22/2316, and as part of the submitted documentation, the applicant detailed that as *“the panels will be located within an grassed area located just outside the manicured domestic curtilage the panels require planning permission”* (Submitted Planning Statement, pg.1, received 15/12/2022). This is significant statement, as it was made prior to the submission of this CLUED and provides a contrasting account than that provided within Patel’s Statutory Declaration. The Council also considered the use of the field as part of their assessment, detailing in the Delegated Report that the *“proposed solar arrays would be sited in an area that is currently open field and subsequently would involve some loss of grazing land”.*

In addition, the aerial imagery submitted in support of the application does not clearly demonstrate a material change in the character or appearance of the land throughout the relevant period. The 2012 aerial imagery shows a parcel of land with the characteristics of a field or paddock, and this general appearance remains evident in subsequent imagery. Whilst the evidence demonstrates that areas of the land were subject to regular mowing and maintenance, as discussed above, such works do not in themselves, demonstrate that a material change of use to residential curtilage has occurred.

The Council is not satisfied that the submitted evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the application ‘Land’ has been used as residential curtilage incidental to the enjoyment of the dwellinghouse continuously for a period of at least ten years prior to the submission of the application. Whilst the evidence indicates that the ‘Land’ has been subject to maintenance and at times various domestic and recreational activities have taken place on the ‘Land’, these activities alone do not demonstrate a material change of use to residential curtilage. The evidence therefore fails to demonstrate on the balance of probability the lawful establishment of

the claimed use for the required period and the Lawful Development Certificate is therefore recommended for refusal.

Recommendation: Application Refused

Reason(s) for Refusal:

1. It has not been demonstrated, on the balance of probability, that the land the subject of this application (and shown outlined in red on the attached plan) has been used continuously for domestic purposes as part of the residential curtilage incidental to the enjoyment of the dwellinghouse known as Rowan for a period in excess of ten years prior to the date of the application.

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DC/26/1524
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **not approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Statutory Declaration of Trevor Jones	NONE	08.10.2026
Supporting Statement	Statutory Declaration of Amit Rameshchandra Patel	NONE	08.10.2026
Supporting Statement	Covering Letter	NONE	23.09.2026
Location plan		NONE	23.09.2026

DELEGATED

Case Officer sign/initial Sam Nye Date: 16/11/26

Authorising Officer sign/initial Tamara Dale Date: 18/11/2026


Rowan
Drain