



Appeal Decision

Site visit made on 18 September 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal Ref: APP/M1005/X/22/3312807

Hollow Cottage, 2 The Cottages, Chesterfield Road, Buckland Hollow, Belper, Derbyshire DE56 2HT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Dawn Flanagan against the decision of Amber Valley Borough Council.
 - The application ref AVA/2022/0368, dated 25 April 2022, was refused by notice dated 30 June 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is 'use of the land for the residential garden and curtilage of the property known as Hollow Cottage'.
-

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary matters

2. With reference to the use for which an LDC is sought, the 'curtilage' of a building is not a use of land and can change in extent over time. The use for which an LDC is sought will therefore be considered to be 'use of the land for the residential garden of the property known as Hollow Cottage'.
3. The address of the property given in the header above is taken from the application form.
4. An application for costs has been made by Mrs Dawn Flanagan against Amber Valley Borough Council. The application is the subject of a separate decision.

Reasons

5. Hollow Cottage is a detached dwelling on the north-west side of Chesterfield Road. Between the dwelling and the road is a parking area and immediately to the south-west of this area is a steep bank on top of which is a hedgerow. To the south-west of the hedgerow is a grassed area that slopes down to the north-west away from the road to a fenced boundary to a field. The sloped grassed area extends round the hedgerow to a flat grassed area to the north-west of the dwelling. Between the grassed area to the south-west of the hedgerow and the road is a strip of dense woodland.

6. The Appellant, who purchased the property in 2013 together with her partner, is seeking to establish that the grassed area to the south-west of the hedgerow and to the north-west of the dwelling, hereafter referred to as 'the land', is residential garden to Hollow Cottage. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the land has been used as residential garden for a ten-year period such that the use became immune from enforcement action.

7. The ten-year period does not have to be but for the purposes of the appeal is the ten years prior to the date of the application; 25 April 2022. The Appellant, her partner and her son have provided sworn and dated statutory declarations. These declarations, together with other evidence such as aerial photographs and the sales particulars produced before the property was purchased, justify a conclusion that the land has been in use as residential garden since the property was purchased by the Appellant and her partner on 11 April 2013.

8. For an LDC to be granted there must therefore be sufficiently precise and unambiguous evidence to demonstrate that, on the balance of probability, the land was residential garden between 25 April 2012 and 11 April 2013. An aerial photograph taken in 2010 is consistent with other such photographs taken in 2016 and 2017. It shows the land to be different in character to the field beyond the boundary fence, and it shows there to be a sunken seating area to the south-west of the hedgerow, a raised seating area close to the roadside woodland, and a level landscaped seating area to the north-west of the dwelling. The consistency of evidence between the aerial photograph of 2010 and the aerial photographs taken in later years is sufficiently precise and unambiguous to justify a conclusion that the land has been in use as residential garden to Hollow Cottage for more than the ten-year period prior to the date of the application.

9. For the reasons given, and as a matter of planning judgement, the Council's refusal to grant an LDC for use of the land for the residential garden of the property known as Hollow Cottage at Hollow Cottage, 2 The Cottages, Chesterfield Road, Buckland Hollow, Belper, Derbyshire was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 April 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use has subsisted uninterrupted for in excess of ten years and is immune from enforcement action.

Signed

John Braithwaite

Inspector

Date: 21 September 2023

Reference: APP/M1005/X/22/3312807

First Schedule

Use of the land for the residential garden of the property known as Hollow Cottage

Second Schedule

Land at Hollow Cottage, 2 The Cottages, Chesterfield Road, Buckland Hollow, Belper, Derbyshire DE56 2HT

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated 21 September 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

**Land at Hollow Cottage, 2 The Cottages, Chesterfield Road, Buckland Hollow,
Belper, Derbyshire DE56 2HT**

Reference: APP/M1005/X/22/3312807

Scale: not to Scale

