



Appeal Decision

Site visit made on 27 January 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

Appeal Ref: APP/P0240/X/23/3334273

72 Lower Shelton Road, Marston Moretaine, Bedford MK43 0LW

- 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 Mr John Wingfield against the decision of Central Bedfordshire Council.
 - The application ref CB/22/04755/LDCE, dated 8 December 2022, was refused by the Council by notice dated 22 June 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is garden to residential property (Title BD289835).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. The appellant has sought to confirm that use of the appeal site as garden to the residential property known as 72 Lower Shelton Road is lawful. The appellant's description of use, as set out in the original application form, was "*Garden to residential property as Title no BD289835*".
3. However, the Council's refusal notice was based on an amended use description, which is described as "*Land to residential property is garden land and within the residential curtilage of the property*". The application was refused on the basis of this amended description, as the Council did not consider the land formed part of the curtilage to no. 72.
4. An application under s191(1)(a) of the 1990 Act is made to confirm whether any existing use of land is lawful. The use in this instance is residential garden. Curtilage is not a use of land, and should not have formed part of the description of use. I have therefore retained the appellant's original description (subject to minor tweaks to help with clarity), and have assessed the appeal on this basis.
5. As this appeal relates to an application for a Lawful Development Certificate (LDC), the planning merits of the development are not relevant. The burden is on the appellant to demonstrate their case, on the balance of probability.

Main Issue

6. In this context, the sole main issue is whether use of the appeal property as garden to the residential property known as 72 Lower Shelton Road, is lawful.

Reasons

7. The Council accepts that the appellant has demonstrated, on the balance of probability, that the appeal site had been used as garden to no. 72 for a period of at least 10 years, prior to the application being made. Based on the evidence before me, which includes supporting statements, historic photos, satellite images, signed affidavits and receipts/invoices, I have no reason to disagree with this position.
8. In accordance with s171B(3) of the 1990 Act, use of the property as garden to no. 72 was therefore immune from enforcement action on the date of application, and pursuant to s191(2) of the 1990 Act, was lawful.

Other Matters

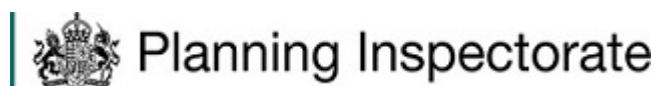
9. The concept of curtilage does not affect the site's established lawful use as garden to no. 72. Notwithstanding the representations made by the parties on this point, the issue therefore falls outside the scope of this appeal.
10. I have used the Land Registry plan for the purpose of the certificate, as this shows the area subject to the application clearly delineated in red.

Conclusion

11. For the reasons given, I conclude, on the evidence available, that the Council's refusal to grant an LDC in respect of use as garden to residential property (Title BD289835) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Mr James Blackwell

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 8 December 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shaded in red 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:

On the balance of probability there is sufficient evidence to show that all of the land shaded red has been used continuously for a period of 10 years or more as residential garden land to the property known as 72 Lower Shelton Road.

Signed

Mr James Blackwell

Inspector

Date: 31 January 2025

Reference: APP/P0240/X/23/3334273

First Schedule

Use as garden to residential property (Title BD289835)

Second Schedule

Land at 72 Lower Shelton Road, Bedford MK43 0LW

IMPORTANT NOTES – SEE OVER

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: 31 January 2025

by **Mr James Blackwell LLB (Hons) PGDip, Solicitor**

Land at: 72 Lower Shelton Road, Bedford MK43 0LW

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Scale: Not to Scale

