
Appeal Decision

Site visit made on 25 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/Y3940/X/24/3347591

The Old Byre, Sevington, Grittleton, Chippenham SN14 7LD

- 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 and Mrs Stephen Barrass against the decision of Wiltshire Council.
- The application ref PL/2024/04175, dated 1 May 2024, was refused by notice dated 20 June 2024.
- 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.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. The evidence of both parties refers to the appeal site being used as “curtilage”. However, curtilage defines an area of land in relation to a building and is not a use of land in itself. A building’s curtilage can change over time and its extent is not reliant upon planning permission, nor a Lawful Development Certificate (LDC), defining it. As it is not a use of land, there is no period of immunity for curtilage.
2. In terms of the appeal, an LDC under s191(1)(a) of the 1990 Act can only confirm whether an existing use of land is lawful. In this instance, the existing use is said to be residential garden, and I have determined the appeal solely on this basis.
3. The appellant says the appeal site has been used as garden (incidental to the residential use of the main dwelling) since 2002, when they first acquired the property. On this basis, they say its use was immune from enforcement on the date of application, and therefore lawful. Conversely, the Council says the activities which have taken place on the land do not amount to garden use, and therefore say no material change of use has occurred.
4. The case of both parties appears to be predicated on the appeal site being, or having previously been, its own planning unit separate from the main dwelling. Whilst not explicit, the parties’ evidence suggests the site’s pre-existing use was agricultural in nature. I have proceeded on this same basis.
5. As this appeal relates to an application for an LDC, the burden is on the appellants to demonstrate their case. In the case of LDC applications for existing use, Planning Practice Guidance says that if a local planning authority has no evidence itself, not any 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.

Main Issue

6. In this context, the main issues are:
- whether a material change of use of the appeal site to garden has occurred; and
 - if a material change of use to garden has occurred, whether this use had subsisted continuously and uninterrupted for a period of at least ten years prior to the date of application.

Reasons

Material Change of Use

7. The appeal site is situated to the west of the main residential property, and wraps around its northernmost side. The site is separated from the main garden by a low brick wall, and is accessed via a gate from the western side of the main garden. The boundary wall also extends along its southern and western sides, and connects with the front elevation of the property, which directly abuts the pavement. Visually, the site therefore integrates with the main property, which means it is seen as part and parcel of the property as a whole.
8. In a sworn affidavit, the appellants say the appeal site has been used as an extension to their main garden since 2002, when they first acquired the property. In particular, they say the site has been used for activities such as gardening, planting, composting, sitting out and playing, all of which are typical of a residential garden use.
9. The alleged use is consistent with the physical character of the appeal site, which encompasses many features typical of a residential garden: extensive planting has taken place within the appeal site, including a wide variety of trees and wildflowers; there is a shed full of gardening tools; domestic compost bins; seating areas; a fire pit; a children's climbing frame; and a pet cemetery. Whilst these features have evolved over the years and some are more recent than others, collectively, they are indicative of the site having been used as an extension to the main garden.
10. This use of land, which is domestic in nature, is very different to use of the land for agriculture. The domestic paraphernalia associated with this use has also altered the physical character of the site, so it no longer appears agricultural in character. Overall, these factors are indicative of a material change of use having occurred.

Ten Years

11. As set out, the appellants say the appeal site has been used as garden since they acquired it in 2002. Noting the modest size of the main garden, it seems logical that the appeal site would have been used in this way throughout the appellants' ownership: the two areas are closely integrated, with the appeal site forming a natural continuation of the main garden via the access gate.
12. Whilst the intensity of activity within the appeal site may well have fluctuated in the ten years preceding the application, this is not inconsistent with it having been used continuously and uninterrupted as a garden throughout this time. Indeed, intensity of garden usage will typically vary throughout any given year due to factors such as weather and other seasonal changes.

13. Overall, I am therefore satisfied the appellants have demonstrated that the appeal site had been used as garden for a period of at least ten years prior to the date of application.

Conclusion

14. In summary, the appellants have demonstrated, on the balance of probability, that a material change of use of the appeal site to garden (incidental to the residential use of the main dwelling) has occurred, and that this use had subsisted for at least ten years prior to the date of application. The Council has presented little evidence to make the appellants' version of events less than probable. In accordance with s171B(3) of the 1990 Act, this use was therefore immune from enforcement on the date of application, and pursuant to s191(2) of the 1990 Act, was lawful.
15. In turn, I conclude that the Council's refusal to grant a certificate of lawful use or development for garden use was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Other Matters

16. LDC applications are fact specific and must be determined on their own merits. Nonetheless, the circumstances in the Shrover Lodge¹ appeal were materially different to those before me: the land in that case was partly used for golf, an activity not typically associated with residential use. The case therefore has little bearing on my decision. Even so, it is noteworthy that the Inspector in that case did highlight that gardening activity is quintessentially an activity carried out by homeowners incidental to the residential use of the dwelling house, which is consistent with the conclusion I have reached. The Glenthorne appeal² was quashed in the High Court, so has no bearing on my decision. Even so, both the Judgement quashing that decision and the redetermined appeal are again consistent with the conclusions I have reached.

Formal Decision

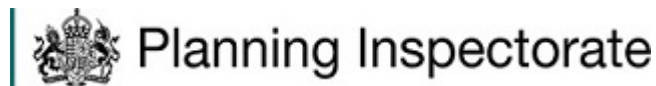
17. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Mr James Blackwell

INSPECTOR

¹ APP/M1710/X/16/3162746

² APP/T3725/X/15/3002141



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 1 May 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

The existing use had been ongoing continuously and uninterrupted for a period of ten years or more on the date of application.

Signed

Mr James Blackwell

Inspector

Date: 28 March 2025

Reference: APP/Y3940/X/24/3347591

First Schedule

Use as garden

Second Schedule

Land at The Old Byre, Sevington, Grittleton, Chippenham SN14 7LD

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: 28 March 2025

by **Mr James Blackwell**

Land at The Old Byre, Sevington, Grittleton, Chippenham SN14 7LD

Reference: APP/Y3940/X/24/3347591

Scale: Not to Scale

