
Appeal Decision

by Paul Dignan MSc PhD

Site visit made on 10 February 2025

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2025

Appeal Ref: APP/J0405/X/24/3344289

Scires Farm, Brackley Road, Water Stratford, Buckinghamshire, MK18 5DN

- 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 P Bassett against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application ref 23/03120/CPE, dated 9 October 2023, was refused by notice dated 4 December 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: Use of land as garden land within curtilage of dwelling.
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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.

Reasons

2. The application was made under section 191(1)(a) of the 1990 Act, which enables any person to ascertain whether any existing use of buildings or other land is lawful. However it is framed, it is clear that the application seeks to establish that the appeal site can lawfully be used for purposes incidental to the use of the dwellinghouse at Scires Farm as such. Although, for the reasons below, I do consider whether the land falls within the curtilage of the dwellinghouse at Scires Farm, the application does not, nor should it, seek to establish the curtilage of the dwellinghouse. I shall amend the description accordingly to accurately clarify what is sought, namely certification that the use of the land as garden land incidental to the use of Scires Farm as a dwellinghouse is lawful.
3. In the circumstances of this application and appeal, that use will be lawful if the land falls within the curtilage of the dwelling, by virtue of section 55(2)(d) of the 1990 Act, which provides that incidental residential of land use does not constitute 'development' if it falls within the curtilage of the dwellinghouse. Alternatively, if the land is outside the curtilage of the dwelling that use will be lawful if it can be shown that the use of the land as garden land incidental to the use of Scires Farm as a dwellinghouse commenced at least 10 years before the date of the application and that use continued without significant interruption thereafter so as to be immune from enforcement action by virtue of section 171B(3) of the 1990 Act.

Curtilage

4. Curtilage is not a land use, it is an area of land that is intimately associated with a building such that it can be considered as part and parcel of that building. It must serve the purpose of the building, the dwellinghouse in this case, in a reasonably necessary or useful manner. The extent of the curtilage of a building is a question of fact and degree. Relevant considerations include physical layout, ownership past and present, and the use or function of the land past and present.
5. The layout of the overall property reflects its former use as a residential working farm. The access from the public highway splits upon entering the land, one driveway leading to the dwelling and the other to the former farmyard and buildings. The appeal site lies between the driveways. The land, on the opposite side of the driveway to the dwellinghouse, is enclosed by a hedge with access from the dwellinghouse driveway. In an appeal decision¹ against a refusal of planning permission for a tennis court on the land in 2009 the Inspector described the land as being both physically and visually unrelated to the dwelling, finding also that it was not within the curtilage of the dwellinghouse. The land has since been enclosed by hedging, so that it no longer appears more closely related visually to what was, then at least, the farmyard. However, the spatial and visual separation from the dwellinghouse remains clear, such that it has the appearance of a separate self-contained enclosure quite distinct from the rest of the residential property.
6. The appeal site and surrounding land have evidently been in the same ownership for many years, the dwellinghouse having been granted planning permission in 1981 subject to an agricultural occupancy condition. The dwelling currently benefits from a Certificate of Lawful Use or Development (LDC) which effectively certifies that the condition is currently immune from enforcement action having been in breach continuously for more than 10 years, though the dwellinghouse remains subject to the condition. It is notable however, that the LDC application plan, which does include the driveway, parking and turning areas and substantial garden land surrounding the dwelling, does not include the appeal site itself.
7. Turning to use, past and present, the appellant claims to have used the land as garden land since 2004, but the tennis court application made in 2008 describes it as agricultural land, apparently having been used for recreation and as a paddock for domestic horses. While the appeal was dismissed, there is ample evidence to show that works to establish a grass tennis court on the land took place in late 2010, and a photograph dated May 2011 shows the court in use, and a July 2011 photograph shows a bouncy castle on the land for a children's party. A further photograph dated May 2014 shows the tennis court still in use, albeit lines do not appear to have been maintained, but that photograph also shows small mobile goalposts, suggesting other recreational uses. The goalposts can also be seen in June 2015 and December 2018 photographs, the latter apparently showing the annual Christmas football match, and some tents can be seen on the site in August 2021. Goalposts can also be seen in aerial imagery with indicative dates of August 2017 and May 2020. While it is not unusual for activities associated with on-farm dwellings to make use of land on the wider holding for recreational activities such as outdoor sport, camping and parties, this evidence indicates that the land

¹ Appeal Ref. APP/J0405/A/09/2093339

has been used for recreational purposes since at least the time of the establishment of the tennis court, the evidence from before that being insufficient in the light of the contrary evidence. Whether that use has become immune from enforcement is a matter I address in detail below.

8. Considering all of these factors, despite the use of the land for purposes associated with the dwellinghouse at various times since 2010, the visual distinction and physical separation from the dwellinghouse and its well-established grounds and the exclusion of the land from the LDC application all point to the appeal site lying outside of the dwellinghouse curtilage. The mere fact that land is "used and enjoyed" with a building does not suffice to make it part of the curtilage of that building. For these reasons, as a matter of fact and degree, I find that the land is not within the curtilage of the dwellinghouse at Scires Farm.

Use

9. As noted above, there is ample evidence to show that works to establish a grass tennis court on the land commenced in late 2010 and the court was marked out in May 2011. That in itself would have given the land a domestic character. Subsequent evidence of use for domestic purposes includes photographs of a bouncy castle for a birthday party on the land in July 2011, of the court in use in May 2014 when mobile football goals were evident, of the land marked out for football with the mobile goalposts in place, along with a garden bench, of the land being used for playing football in December 2018, and of camping in August 2021. There is also a statutory declaration by the appellant stating that the family have used the land as garden land continuously since about 2004. If there is no evidence to the contrary, I consider that this would suffice to show, on the balance of probabilities, that the land has been in such use continually for at least 10 years.
10. However, the land is included in a 2014 prior approval application (ref. 14/02422/COUAF) for the change of use of a building from agricultural to flexible commercial use. The requirement for prior approval arose as a pre-condition for a change of use under Part 3 Class M of the GDPO that was in force at the time². The red line plan that was submitted with the application clearly shows the land subject of this appeal to be included within the curtilage of the subject agricultural building. Had that change of use actually occurred, then that would have resulted in a change of use of the land shown as its curtilage, which in turn would have represented a new chapter in the planning history of the land, such that any previous use would have become irrelevant. By adopting the GDPO Class M permission the appellant would have given up any possible existing or accruing use rights.
11. As it turned out, on my site visit I could see that the building shown on the prior approval application plan had not in fact changed use to a commercial use. Rather the next building to the north-west of the building shown on the application plan had changed use to a commercial use and from which the appellant's business, commercial vehicle spares and distribution, operates. The appellant's statutory declaration says that he moved his business into a former farm building in 2016 and that use has continued.
12. I sought the views of the appellant and the Council about what had occurred, but neither could provide any real clarity. It is unnecessary for the purposes of this

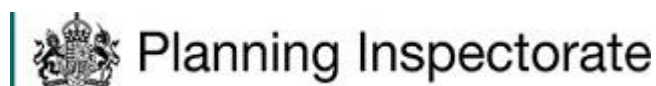
² The Town and Country Planning (General Permitted Development) Order 1995

appeal to go into detail, but I have come to the view, on the limited evidence available, that the only common sense conclusion can be that the application plan submitted in 2014 was simply incorrect, and the barn that it should have shown is the barn that did in fact change use to a commercial use, being the distribution centre for the appellant's business. The application plan does not accurately show the buildings present on the area illustrated, there having been three barns whereas only two are shown, but the barn that did change use to a commercial use has, and had at the time, hard standing in front of it. That hardstanding adjoins the appeal site, and it seems to me that was what was intended to be shown as the curtilage of the building which was to change use. For these reasons I disregard that application entirely insofar as the Council rely upon it to show that the appeal site was considered by the appellant to be in agricultural use in 2014. On the balance of probabilities I consider that that was not the case.

13. Overall, from the instigation of works to create a tennis court on the land in late 2010 up until the date of the application I consider that there is no evidence to contradict or otherwise make the appellant's claim of use of the appeal site as garden land less than probable. I have considered the Council's argument that it is not clear that some of the photographs submitted in evidence relate to the land in question, but I am satisfied in the circumstances that they are what is claimed. I consider also that the appellant's evidence alone is sufficiently precise and unambiguous to justify a finding that the land has been used as garden land for a continuous period in excess of 10 years, on the balance of probability. It follows that the change of use of the land from agricultural use to use as garden land incidental to the use of Scires Farm as a dwellinghouse is now immune from enforcement by virtue of section 171(B)(3).
14. For these reasons I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for use of the land as garden land incidental to the use of Scires Farm as a dwellinghouse is 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).

Paul Dignan

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 9 October 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and 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 commenced more than 10 years before the date of the application and continued without interruption such that it is immune from enforcement by virtue of section 171B(3) of the Act.

Signed

Paul Dignan

Inspector

Date: 2nd April 2025

Reference: APP/J0405/X/24/3344289

First Schedule

Use of the land as garden land incidental to the use of Scires Farm as a dwellinghouse.

Second Schedule

Land at Scires Farm, Water Stratford, MK18 5DN

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: 2nd April 2025

by Paul Dignan

Land at: Scires Farm, Water Stratford, MK18 5DN

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Scale: Not to Scale

